California Department of Transportation DBE Program Plan 2016



Table of Contents

PAR	ГΙ		1
AC	KNC	WLEDGEMENTS	2
POI	LICY	STATEMENT	3
I.	G	eneral Requirements	6
	A.	Objectives §26.1	6
	B.	Applicability §26.3	6
	C.	Exemptions and Waivers §26.55	6
	D.	Definitions §26.5	6
	E.	Nondiscrimination Requirements §26.7	. 11
	F.	Record Keeping §26.11	. 11
	G.	Federal Financial Agreement and Assurances §26.13(a)(b)	. 16
II.	А	dministrative Requirements	. 17
	A.	DBE Program Plan and Updates §26.21	. 17
	B.	Policy Statement §26.23	. 18
	C.	DBE Liaison Officer §26.25	. 18
	D.	DBE Financial Institutions §26.27	. 20
	E.	Prompt Payment §26.29	. 20
PAR	Г II:	FHWA DBE Program Plan	. 22
	A.	Directory §26.31(a)	. 25
	B.	Overconcentration §26.33	. 25
	C.	Business Development Programs §26.35	. 25
	D.	Monitoring and Enforcement Mechanisms §26.37	. 27
	E.	Fostering Small Business Participation §26.39	. 30
I.	G	oals, Good Faith Efforts, and Counting	. 31
	A.	Set-asides or Quotas §26.43	. 31
	B.	Overall Goals §26.45	. 31
	C.	Shortfall Analysis §26.47(c)	. 32
	D.	Breakout of Estimated Race-Neutral and Race-Conscious Participation §26.51(a-c) 32
	E.	Contract Goals §26.51(d-g)	. 32
	F.	Good Faith Efforts and Procedures §26.53	. 33
	G.	Counting DBE Participation §26.55(a-h)	. 38

II.	Race-Neutral Measures Designed to Assist All Small Businesses Meeting the F Size Standards				
	Exa	amples of race-neutral activities Caltrans performs include:			
ATT	AC	HMENTS			
PART	ART III: Federal Transit Administration DBE Program Plan				
	A.	Prompt Payment §26.29	167		
	В.	Directory §26.31(a)	167		
	C.	Overconcentration §26.33	168		
	D.	Business Development Programs §26.35	168		
	E.	Monitoring and Enforcement Mechanisms §26.37	169		
	F.	Fostering Small Business Participation §26.39	171		
I.	G	oals, Good Faith Efforts, and Counting	171		
	A.	Set-asides or Quotas §26.43	171		
	В.	Overall Goals §26.45	171		
	C.	Shortfall Analysis §26.47(c)	172		
	D.	Section 26.49 Transit Vehicle Manufacturers Goals	172		
	E.	Breakout of Estimated Race-Neutral and Race-Conscious Participation §26.51 172	l(a-c)		
	F.	Contract Goals §26.51(d-g)	172		
	G.	Good Faith Efforts and Procedures §26.53	173		
	Н.	Counting DBE Participation §26.55(a-h)	176		
II.		ace-Neutral Measures Designed to Assist All Small Businesses Meeting the Re ze Standards			
	Exa	amples of race-neutral activities Caltrans performs include:	181		
ATT	AC	HMENTS	183		
STA	ND	ARD AGREEMENT	198		
PART	IV	: DBE Certification	240		
I.	D	BE Certification Standards and Procedures	241		
	A.	DBE Certification – Determining Burdens of Proof and Group Membership - & §26.63	-		
	В.	Certification – Determining Business Size §26.65	242		
	C.	Certification – Determining Social and Economic Disadvantaged §26.67	242		
	D.	Certification – Determining Ownership Certification §26.69	243		
	E.	Certification – Determining Control §26.71	244		
	F.	Certification – Establishing NAICS Codes §26.71(n)(1)	245		

	G. Certification –§26.73	246
II.	Unified Certification Program §26.81	246
III.	UCP – Certification Decisions §26.83(a-m)	247
IV.	Interstate Certification §26.85	249
V.	Records and Files §26.83(g) and §26.109	250
VI.	Denial Procedure §26.85, §26.86	250
VII.	DBE Ineligibility Complaints & Intent to Remove DBE Certification Status §26.87	251
VIII.	DBE Suspension of Certification §26.88	253
IX.	Information, Confidentiality, Cooperation §26.109(a)(b)	253

PART I

PART I

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 Engineering Services, Office Engineer, the Division of Construction, the Division of Design, Design-Build, the Division of Procurement and Contracts, Division of Rail and Mass Transportation, the Division of Local Assistance, and the Division of Transportation Planning.

This Disadvantaged Business Enterprise Program Plan reflects all current Federal Highway Administration (FHWA) reporting, monitoring, contract language, and program-related requirements as it pertains to FHWA 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 Sacramento, CA 95811 (916) 324-0449 Or access via Web site: http://www.dot.ca.gov/obeo/index.html

This publication will be made available in alternative formats: Braille, large print, computer disc, audio version, or in a different language upon request. To discuss how to receive a copy of this publication in an alternative format, please contact:

California Department of Transportation Office of Business and Economic Opportunity 1823 14th Street Sacramento, CA 95811 (916) 324-0449 711 (TTY) smallbusinessadvocate@dot.ca.gov

POLICY STATEMENT §26.1, §26.23, and §26.3

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 (§26.1) 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.
- Promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- Assist the development of firms that can compete successfully in the market place outside the DBE Program.
- Provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

Pursuant to §26.3, 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, and all subrecipient/subgrantees. 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 DOUGHER (Signature) Director

10/26/2016

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), and Federal Transit Administration (FTA).

As required by federal law, Caltrans 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 Department's 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 <u>http://www.dot.ca.gov/obeo/index.html</u> View the Caltrans Organizational Chart at:

http://dot.ca.gov/orgchart/departmentalorgchart.pdf (See Attachment A.)

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

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

I. General Requirements

A. Objectives §26.1

The objectives are found within the policy statement on this first page of this program plan.

B. Applicability §26.3

Caltrans is the recipient of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

Caltrans is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Caltrans adheres to The Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 et seq.). As well as the Business and Professions Code § 7000.5 et seq.

C. Exemptions and Waivers §26.55

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, or FTA.

D. Definitions §26.5

Caltrans will adopt the definitions contained in §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), and the Federal Transit Administration (FTA).

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.

Domestic Partnership means a legal relationship available to all same-sex couples, and to those opposite-sex couples where at least one party is age 62 or older. It affords the couple "the same rights, protections, and benefits, and... the same responsibilities, obligations, and duties under law..." as married spouses. (see "Spouses" in this section)

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: 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 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 reputably 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. Also reference "Domestic Partnership", that will fall under the definition of Spouse.

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]

E. Nondiscrimination Requirements §26.7

Caltrans will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin. (Subpart A, §26.7(a))

In administering its DBE program, Caltrans will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin. (Subpart A, §26.7(b))

F. Record Keeping §26.11

Scheduled Reporting (§26.11(a)(b))

1. Caltrans provides semi-annual and annual DBE achievement reports to FHWA and FTA. 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 1 through March 31, will be submitted by June 1.
- DBE activity from April 1 through September 31, will be submitted by December 1.

Caltrans awarding divisions/oversight divisions, and subrecipients must collect and provide the following Data to Caltrans' OBEO, Policy and Reports Branch:

- Prime and Subcontract Awards
- Commitments
- Payments to prime contractors and consultants
- Payments to DBE subcontractors and subconsultants by gender

This information is provided by the awarding divisions and program oversight divisions. Details for each division's process are included in this document.

- a) The Division of Design, Design-Build, reports the following to Caltrans' OBEO, Policy and Reports Branch on a semi-annual basis as it relates to Design-Build contracts only:
 - i. Prime and Subcontractor Awards
 - ii. DBE Commitments, based on the proposal submitted by the successful design-builder at the time of award.
 - iii. Payments to prime contractors and consultants, based on monthly reporting required in the Design-Build contract to be provided by the design-builder to the Division of Design.
 - iv. Payments to DBE subcontractors and subconsultants, based on monthly reporting required in the Design-Build contract to be provided by the design-builder to the Division of Design.
 - v. Total Payments, is gathered at the time of the final utilization report submitted by the design-builder at the close of the project as outlined in the contract requirements.

The Division of Design collects all of the relevant information for the uniform report on a monthly basis, on an excel spreadsheet. It is divided into the appropriate reporting periods by date and then submitted to Caltrans' OBEO, Policy and Reports Branch at least one month prior to the official due date to FHWA.

- b) The Division of Engineering, reports the following to Caltrans' OBEO, Policy and Reports Branch on a semi-annual basis as it relates to Caltrans' Major Construction contracts only:
 - i. Prime and Subcontractor Awards

- ii. DBE Commitments, submitted by the successful contractor at the time of award.
- iii. Payments to prime contractors
- iv. Payments to DBE subcontractors and suppliers, based on monthly reporting by the prime contractor.
- v. Total Payments, is gathered at the time of the final utilization report submitted by the prime contractor at the close of the project as outlined in the contract requirements.

This information is provided to the Division of Engineering, Contract Awards through the Division of Engineering Services-Office Engineer database. The relevant information is input into the database throughout the life of the contract.

- c) The Division of Local Assistance, reports the following information to Caltrans OBEO, Policy and Reports Branch on a semi-annual basis as it relates to Subrecipient USDOT-assisted contracts only:
 - i. Prime and Subcontractor Awards
 - ii. DBE Commitments, submitted by the successful contractor at the time of award.
 - iii. Payments to prime contractors
 - iv. Payments to DBE subcontractors and suppliers, based on monthly reporting by the prime contractor.
 - v. Total Payments, is gathered at the time of the final utilization report submitted by the prime contractor/consultant at the close of the project as outlined in the contract requirements.

This information is provided to the Division of Local Assistance. The relevant information is input into the LP 2000 database by the District Local Assistance Engineer (DLAE). The DLAE is responsible for gathering the accurate and timely information directly from the subrecipients throughout the life of the contract.

- d) The Division of Rail and Mass Transportation, reports the following information to Caltrans OBEO, Policy and Reports Branch on a semiannual basis as it relates to Subrecipient USDOT-assisted contracts only:
 - i. Prime and Subcontractor Awards
 - ii. DBE Commitments, submitted by the successful contractor at the time of award.
 - iii. Payments to prime contractors
 - iv. Payments to DBE subcontractors and suppliers, based on monthly reporting by the prime contractor.
 - v. Total Payments, is gathered at the time of the final utilization report submitted by the prime contractor/consultant at the close of the project as outlined in the contract requirements.

There are District Transit Representatives (DTRs) specifically designated in eleven of the twelve Caltrans district offices (District 12, which encompasses all of Orange County, is an urban area and not eligible to compete for 5311 projects) that handle FTA Section 5311 related issues, including the DBE semi-annual report. Upon notice from the Division of Rail and Mass Transportation (DRMT) that the semi-annual reports are due, the DTR will distribute the reporting form and corresponding instructions for completion to all subrecipients in the District. The ADM 0227 form (DBE Awards and Commitments)(See Attachment D.) and the ADM 3069 for (DBE Utilization Report)(See Attachment E.) should also be distributed to the subrecipients. These forms are now required by USDOT and are used to track DBE commitments to actual payments made, as well as to reduce fraud.

- e) The Division of Transportation Planning, Office of Regional Planning, reports the following information to Caltrans OBEO, Policy and Reports Branch on a semi-annual basis as it relates to Subrecipient USDOTassisted contracts only:
 - i. Prime and Subcontractor Awards
 - ii. DBE Commitments, submitted by the successful contractor at the time of award.
 - iii. Payments to prime contractors
 - iv. Payments to DBE subcontractors and suppliers, based on monthly reporting by the prime contractor.
 - v. Total Payments, is gathered at the time of the final utilization report submitted by the prime contractor/consultant at the close of the project as outlined in the contract requirements.

The Office of Regional Planning (ORP) DBE Liaison coordinates the semiannual FTA Uniform Report of DBE Commitments/Awards and Payments and requests Metropolitan Planning Organizations (MPOs) and Regional Transportation Planning Agencies (RTPAs) receiving federal funds for they DBE activities.

2. DBE Program Annual Element Update

The OBEO submits Caltrans' DBE Program Annual Element Update (update) to FHWA and FTA by November 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.

The following divisions/districts provide updates to Caltrans' OBEO Policy Reports Branch each August:

- Division of Design
- Division of Construction
- Division of Engineering Services

- Division of Procurement and Contracts
- Division of Local Assistance
- Division of Rail and Mass Transportation
- Division of Transportation Planning
- 3. Ad-Hoc Reports

Caltrans submits information regarding the program to the USDOT, FHWA, and FTA, 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. This information includes contract number, award amount, DBE commitment, GFE awards, and dollar-weighted monthly and year-to-date contract goals, as well as a Commitment at Award Tracker. This Tracker tracks all DBEs listed for commitment throughout the fiscal year, in some instances identifying by work type. These reports may be found on the OBEO Web site at: http://www.dot.ca.gov/obeo/.

This information is derived from monthly reports received by the following divisions:

- Division of Engineering Services
- Division of Procurement and Contracts
- Division of Local Assistance

In addition to the reports described above, the Policy and Reports Branch provides a detailed report on dollar-weighted monthly and year-to-date contract goals set on federally-assisted contracts each month.

Bidder's List §26.11 (c)

Caltrans, its subrecipients, and local agencies, per 49 CFR, Part 26.11, collect information regarding all DBE and non-DBE firms that bid and quote on USDOT federally-assisted contracts. Caltrans maintains contract information and provides it as supporting documentation to the consultant hired to conduct the Disparity Study on behalf of the Department. As appropriate, Caltrans can use business information that the study team collected as part of the disparity study to augment its vendor data. OBEO maintains the collected businesses, the most recent study concluded in June of 2016. Caltrans will conduct its next study in 2018.

Maintain and Retention of Certified Firms Records §26.11(d)

All DBE Certification files are kept in a secure location in accordance with 49 CFR Part 26.11(d). Access to these records is limited to authorized Certification Branch personnel. Initial documentation submitted as part of the application process is received and assigned to a Certification Analyst for processing. All files, while not in review, must be secured in a locked drawer of the respective analyst's desk until completed.

All information is retained in a secured file room location, this information includes:

- Most recent 3 year tax returns for the firm;
- Most recent 3 year tax return for its affiliates and personal tax returns for the majority owner(s);
- All annual updates;
- No Change affidavits;
- Change Notices;
- On-site reports;
- Personal net worth statements; and
- All correspondence.

MAP 21 Reporting Requirements §26.11 (e)

Caltrans is required to report to USDOT, Office of Civil Rights, and specific data pertaining to the number of certified DBE firms within the Unified Certification Program (UCP). Caltrans reports the percentage and location (whether in-state or out of state) of certified DBE firms in the UCP Directory controlled by the following:

- 1. Women;
- 2. Socially and economically disadvantaged individuals (other than women); and
- 3. Individuals who are women and are otherwise socially and economically disadvantaged individuals.

This data is to be reported to the USDOT, Office of Civil Rights, by January 1 each year and is posted on the OBEO Web Site at: <u>http://www.dot.ca.gov/obeo/</u>.

G. Federal Financial Agreement and Assurances §26.13(a)(b)

Caltrans signed the following assurance, which applies to the administration of USDOT federally-assisted contracts and their administration:

Federal Contract Assurances and Sanctions: §26.13(b)

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." This language can be found in the following areas:

- Division of Design (Design-Build Contracts): Boiler Plate section 7.1.1 Equal Employment Opportunity Policy. (See Attachment F.)
- Division of Engineering Services (Construction Contracts): Standard Specifications Section 2-1.12, page 20. <u>http://www.dot.ca.gov/hq/esc/oe/construction_contract_standards/std_specs/201</u> <u>5_StdSpecs/2015_StdSpecs.pdf</u>
- Division of Construction: 2015 Standard Specifications Section 2-1.12, page 20. <u>http://www.dot.ca.gov/hq/esc/oe/construction_contract_standards/std_specs/201</u> <u>5_StdSpecs/2015_StdSpecs.pdf</u>
- Division of Procurement and Contracts (Non-A&E Contracts): Boiler Plate section (See Attachment G.)
- Division of Procurement and Contracts (Architectural and Engineering Contracts): Boiler Plate section (See Attachment H.)
- Division of Local Assistance: Local Agency Procedures Manual, Exhibit B: Nondiscrimination Assurances. <u>http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter4/4c.pdf</u>
- Division of Rail and Mass Transportation The Disadvantaged Business Enterprise Combination Race-Neutral/Race-Conscious Implementation Agreement for Federal Transit Administration Subrecipients. (See Attachment I.)
- Division of Transportation Planning: 2015 Regional Planning Handbook <u>http://www.dot.ca.gov/hq/tpp/offices/orip/owp/index_files/RPH_Final_May-2015.pdf</u>

II. Administrative Requirements

A. DBE Program Plan and Updates §26.21

As a condition of receipt of FHWA and FTA funding, Caltrans submits significant changes in the DBE Program to USDOT for approval. Caltrans understands significant changes to the plan must be approved by the applicable USDOT agency prior to implementation. Caltrans has established a "one plan" philosophy, where subrecipients and subgrantees must adhere to Caltrans' DBE Program Plan.

When the DBE Program Plan must be updated to reflect significant program changes, the OBEO, Policy and Reports Branch initiates revisions with all applicable Caltrans Divisions. The Caltrans DBE Program Plan is posted on the OBEO Web site once submitted and approved by the applicable USDOT agency.

Those Caltrans divisions required to provide input to the plan with significant changes are:

- Division of Design
- Division of Engineering Services
- Division of Procurement and Contracts
- Division of Procurement and Contracts
- Division of Local Assistance
- Division of Rail and Mass Transportation
- Division of Transportation Planning

Subrecipients of USDOT funds shall update their individual agency plans without being independent of Caltrans' DBE Program Plan. Caltrans has adopted a "One Plan" philosophy.

Division of Local Assistance requires the following on an annual basis:

Chapter 9.6 of the Local Agency Procedures Manual states that "local agency recipients of federal financial assistance shall comply with all elements of Title 49 CFR 26." As an initial step, each local agency shall submit a "DBE Implementation Agreement" (Exhibit 9-A) form to formally acknowledge the local agency's commitment to implement the Caltrans DBE Program [Plan], and to comply with all prescribed responsibilities detailed in the LAPM. Each local agency shall also submit the "Local Agency DBE Annually Submittal Form" (Exhibit 9-B) that provides the following information for the upcoming FFY: Identification of a DBE Liaison Officer, Plan of Race-Neutral Measures, Prompt/Retainage provisions to be used in contracts, and Monitoring and Enforcement mechanisms. (http://www.dot.ca.gov/hq/LocalPrograms/lam/CH09.htm)

B. Policy Statement §26.23

The Policy Statement is elaborated on in the first page of this program plan.

C. DBE Liaison Officer §26.25

Caltrans' DBE Liaison Officer (DBELO), the Assistant Director of the OBEO has direct, has independent access to the Caltrans Director (the current Assistant Director is specified at OBEO's web site, link below). 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 current 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: <u>smallbusinessadvocate@dot.ca.gov</u> Web site: <u>http://www.dot.ca.gov/obeo/</u>

Assistant Director, OBEO:

- 1. Serves as Caltrans' DBELO also referred to.
- 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), and Federal Transit Administration (FTA), 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 Organizational Chart). Those divisions are: Division of Engineering Services, Office Engineer, Contract Advertisement and Award; Division of Construction, Contract Administration; Division of Procurement

and Contracts, Service Contracts, Architectural and Engineering Consultant Contracts and Minor B Contracts; and Subrecipient Monitoring Processes and Procedures; Division of Local Assistance; Division of Rail and Mass Transportation; and Division of Transportation Planning.

D. DBE Financial Institutions §26.27

It is Caltrans' policy 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. Caltrans also encourages prime contractors on USDOT-assisted contracts to make use of these institutions when possible.

To date Caltrans has not identified any such institutions within its California Unified Cortication Program database. However, Caltrans has identified 39 minority owned financial institutions with the Federal Reserve, and can be found on the Federal Reserve Web site at: <u>http://www.federalreserve.gov/releases/mob/current/default.htm</u>.

Caltrans will monitor, on an annual basis, the CUCP database and compare to what is reported in the Federal Reserve to identify DBE certified financial institutions.

E. 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. This clause applies to both DBE and non-DBE subcontracts.

Caltrans reserves the right to withhold progress payments from the prime contractor in the event prompt payment is not adhered to. The following are examples of prompt payment clauses within Caltrans' contracting language:

- Division of Engineering, Construction Contracts: 2015 Standard Specifications Section 9-1.03 "Payment Scope": <u>http://www.dot.ca.gov/hq/esc/oe/construction_contract_standards/std_specs/2015_Std GSpecs/2015_StdSpecs.pdf</u>
- Division of Procurement and Contracts (Non-A&E Contracts): Boiler Plate section (See Attachment G.)
- Division of Procurement and Contracts: A&E Boiler Plate section (See Attachment H.)
- Division of Design, Design-Build: 2015 Standard Specifications Section 9-1.03 "Payment Scope": <u>http://www.dot.ca.gov/hq/esc/oe/construction_contract_standards/std_specs/2015_Std Specs/2015_StdSpecs.pdf</u>
- Division of Local Assistance: Local Agency Procedures Manual Exhibit 9-B "Local Agency DBE Annual Submittal Form": <u>(http://www.dot.ca.gov/hq/LocalPrograms/lam/CH09.htm)</u>
- Division of Rail and Mass Transportation: Exhibit C Master Agreement (See Attachment I.)

- Division of Transportation Planning: 2015 Regional Planning Handbook http://www.dot.ca.gov/hq/tpp/offices/orip/owp/index_files/RPH_Final_May-2015.pdf

Retainage: §26.29(b)

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

Division of Local Assistance allows each sub recipient to choose one of three "Prompt Payment" options provided in 49 CFR 26.29. The sub recipient's selection must be submitted to Caltrans annually using the Local Agency DBE Annual Submittal Form (Exhibit 9-B), this form can be found at:

<u>(http://www.dot.ca.gov/hq/LocalPrograms/lam/LAPM/ch09.pdf)</u> and it will apply to all USDOT-assisted contracts:

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:

- 1. The local agency may decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
- 2. The local agency may decline to hold retainage from prime contractors and include a contract clause, obligating the prime contractor and subcontractors to make prompt and full payment of any retainage kept by the prime contractor or subcontractor to all subcontractors within thirty (30) days after the subcontractor's work is satisfactorily completed.
- 3. The local agency may hold retainage from the prime contractor and provide for prompt and incremental acceptances of portions of the contract, pay retainage to prime contractors based on the acceptances and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to all subcontractors for satisfactory completion of the accepted work within thirty (30) days of local agency payment to the contractor.

PART II: FHWA DBE Program Plan

PART II: FHWA DBE Program Plan

Work Acceptances §26.29(c)

Caltrans confirms the work performed by primes and their subs has been completed per contract specifications prior to progress payments being make. Once progress payments have been made to the prime, the prime will then have seven days to pay its subcontractors or subconsultants for work performed. In an effort to confirm payments to DBEs on Caltrans' contracts, project staff collect the "Monthly DBE Payment" form Construction Engineering Services (CES)-2406F on the 15th of each month. CES-2406F is collected on FWHA funded construction contracts.

The following are additional processes in place to verify and monitor payments made to DBEs on USDOT funded contracts §26.29(d):

- **Division of Procurement and Contracts**: Contract Managers review each invoice sent in by the prime. The invoice is reviewed, verified and either contested or approved prior to payment. Any and all inconsistencies in the invoice must be rectified prior to progress payment being made.
- **Division of Construction**: The project Resident Engineer (RE) or Project Inspector is tasked with onsite oversight of Commercially Useful Function, proper use or substitution of a subcontractor, acceptance of performed work, and ensuring Certified Payroll, "Monthly Disadvantaged Business Enterprise (DBE) Payment" form CES-2406F and all other relevant monthly documentation is submitted prior to a monthly progress payment being made. In addition to the prime's responsibility, it is the responsibility of the RE to properly fill out and submit their monthly diaries to the Labor Compliance Office, within the Division of Construction.
- **Division of Design, Design-Build**: Contract Managers and Resident Engineers is tasked with onsite oversight of Commercially Useful Function, proper use or substitution of a subcontractor, acceptance of performed work, and ensuring Certified Payroll, "Monthly Disadvantaged Business Enterprise (DBE) Payment" form CES-2406F and all other relevant monthly documentation is submitted prior to a monthly progress payment being made. In addition to the prime's responsibility, it is the responsibility of the RE to properly fill out and submit their monthly diaries to the Labor Compliance Office, within the Division of Construction.
- **Division of Local Assistance**: At the beginning of the project, the local agency Resident Engineers (REs) detail the process for work completion during its pre-construction meetings. During and throughout the project, they ensure prompt payment regulations are enforced right up to completion of the project and final payment. Pursuant to Stewardship Agreement between Caltrans and FHWA, this responsibility is delegated to the local agencies.

A subcontractor's work is satisfactorily completed when all tasks called for in the subcontract have been accomplished and documented as required by the agency. The work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed, when an agency has made an incremental acceptance of a portion of the contract work.

In addition, Caltrans has a "Stop Notice" system in place when a subcontractor reports that they have not been paid by a prime. The subcontractor can go onto Caltrans' Division of Accounting Web site: <u>http://www.dot.ca.gov/hq/asc/oap/payments/contact.htm</u>, and file the "Stop Notice". Once filed, the Department withholds funds for the amount of the claim. The following are the steps that are taken after the Stop Notice is filed:

- Prime contractor and the claimant resolve the Stop Notice clam and the claimant releases the Stop Notice withhold by providing the release to the Department. Stop notice release form can be found on the Division of Accounting Web site here: <u>http://www.dot.ca.gov/hq/asc/oap/payments/release.pdf</u>. Provided there are no additional withholds that affect the prime contractor's payments, the Department pays the withheld funds to the prime contractor. <u>If the Stop Notice claims are not resolved</u>, the following may occur:
- Prime contractor submits an affidavit if the validity of the Stop Notice is challenged.
- Claimant submits a counter-affidavit within 20 days of receiving the contractor's affidavit. If a counter-affidavit is not submitted within the statutory time period and there are no other withhold that affect the prime contractor's payments, the funds withheld are released to the prime contractor.
- If an affidavit and counter-affidavit are both filed, the Stop Notice stays in effect and the Department takes no further action.
- Prime contractor or claimant may file a Declaration of Rights action with the court regarding the Stop Notice. The Department will act as directed by the court.

If the claimant does not file an action to enforce the Stop Notice within 180 days following the prime contract acceptance date, the funds withheld are released to the prime contractor, provided there are no other withholds that affect the prime contractor's payments.

Compliance/Title VI Program Branch: OBEO's Compliance/Title VI Program Branch conducts reviews/investigations as a result of risk based assessments in addition to conducting reviews/investigations of complaints related to DBEs participating on active Caltrans contracts. Types of complaint investigations may include, but not be limited to, evaluating commercially useful function (CUF), independence issues, and DBEs acting as an extra participant. Findings are reported to the OBEO Assistant Director, and may also be communicated to Caltrans Division of Construction, Legal Department, Labor Compliance, Division of Local Assistance, Audits and Investigations, as well as FHWA, Office of Inspector General, and other government entities, for further review and/or action.

Additional Mechanisms §26.29(e)

In compliance with §26.29(e), Caltrans utilizes the contracts sanctions listed in §26.13(d) on page 20 of this program plan. Subcontractors, on major construction contracts, can view the details of payment status to prime contractors on the contracts they are currently working on by visiting the Division of Accounting, Major Construction Payment Information at: <u>http://www.dot.ca.gov/hq/asc/oap/payments/</u>.

A. Directory §26.31(a)

Caltrans maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE.

The directory is accessible electronically on the OBEO Web site. 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. Work category codes supplement the NAICS codes with clear, specific, and detailed narrative descriptions of the type of work in which the firm is certified (follow this link to view the work codes: <u>http://www.dot.ca.gov/hq/bep/find_certified.htm</u>). Confidential information concerning DBEs is not shared. Caltrans updates the directory on a regular basis.

Caltrans currently holds the position as the CUCP chair, of the CUCP committee. Caltrans verifies that no CUCP member has a separate UCP directory claiming to reflect all DBE firms in the state. Caltrans makes the directory available in print upon request. The printed version of the directory is updated annually, for the most current download directory list, and print the from the Web site at: www.dot.ca.gov/hq/bep/find_certified.htm.

B. Overconcentration §26.33

Caltrans has determined there is no evidence of overconcentration of participation with DBEs on Caltrans' contracts. Caltrans in part relies, in part on 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, with its Commitment at Award monthly report, which tracks DBEs listed on contracts toward contract goal, this report can be found at: <u>http://www.dot.ca.gov/hq/bep/reports.htm.</u>

C. Business Development 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 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, including DBEs, 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.

D. Monitoring and Enforcement Mechanisms §26.37

The following monitoring and enforcement mechanisms are taken by Caltrans to ensure compliance with 49 CFR Part 26:

- Caltrans will bring to the attention of the USDOT any instances of fraud or dishonest participation within the program. USDOT may then take the necessary steps provided in §26.109
- Caltrans will consider similar actions, according utilizing its own legal authorities.
- Caltrans' Contractor Compliance Branch will investigate substantiated claims
- Caltrans will also provide a monitoring and enforcement mechanism to verify payment to subcontractors on subrecipient contracts.

§26.37(a)(b)(c)

Division of Construction:

In order to meet compliance, the Division of Construction requires the resident engineer to conduct a pre-construction conference (see 2014 Construction Manual Section 8-303C, Preconstruction Conference at:

<u>http://www.dot.ca.gov/hq/construc/constmanual/construction_manual.pdf</u>). The conferences shall include, but not be limited to, the resident engineer and structure representative including principal assistants, the construction engineer, the district construction deputy director, the prime contractor, the contractor's superintendent, and other key personnel. Specialists should be included too, such as the district labor compliance officer and the district safety coordinator, among others.

During the pre-construction conference, the contractor is informed of the contract requirements to use the committed DBE firms or go through the applicable substitution process (2014 Construction manual – Construction Policy Bulletin 15-2: Section 8-304A, "Monitoring and Enforcement"). As required by federal and state regulations,

the resident engineer and staff must monitor worksites to ensure work committed to a DBE is actually being performed by the respective firms through ensuring a commercially useful function. For federally funded projects, the resident engineer must certify in writing that a field review of DBE records occurred and the worksite was monitored by Caltrans staff.

Forms Collected by the Resident Engineer from the prime contractor (§26.37(c)):

- DBE Monthly Trucking (CEM-2403)
- DBE Monthly Payment Information (CEM-2406F)
- DBE Final Utilization Report (CEM-2402F)

Compliance/Title VI Program Branch:

OBEO's Compliance/Title VI Program Branch conducts reviews/investigations as a result of risk based assessments in addition to conducting reviews/investigations of complaints related to DBEs with higher amounts of participation on active Caltrans contracts. Types of compliance investigations may include, but not be limited to, evaluating commercially useful function (CUF), independence issues, and DBEs acting as an extra participant. Findings are reported to the OBEO Assistant Director, and may also be communicated to Caltrans Division of Construction, Legal Department, Labor Compliance, Division of Local Assistance, Audits and Investigations, as well as FHWA, Office of Inspector General, and other government entities, for further review and/or action.

The overall function of the Compliance/Title VI Program Branch is to ensure Contractor Compliance, Title VI Compliance, and conduct Commercially Useful Function Reviews / Investigations on Disadvantaged Business Enterprise (DBE) firms performing on Caltrans projects. The Compliance/Title VI Program Branch will conduct on-site visits to the offices of the firms and to the job sites where the work is being performed.

When conducting Investigations/Commercially Useful Function Reviews - The three main objectives are:

(1) Ensure that dollars counted towards DBE goals are merited,

(2) Ensures the Federal Government funds entrusted to the State of California meet federal requirements, and

(3) Investigate potential DBE fraud.

Division of Design-Design Build:

Design-builder is required to report payments to DBE firms on a monthly basis. All subcontracts entered into by design-builder are reported to Caltrans and made available for inspection and review. Caltrans and design-builder meet quarterly to review compliance and progress towards attainment of the project goal(s).

Contract Manager, Resident Engineer and Inspectors monitor reports and the worksite to confirm DBE participation. Written documentation is provided in daily diaries. Daily diaries are stored in the project files per the Caltrans Construction Manual.

Design-builder submit a DBE Performance Plan which documents how the project goal will be attained. The design-builder also submits a DBE Work and Payment schedule to assist in monitoring goal attainment (§26.37(c)). Design-builder reports monthly on DBE commitments and payments. Caltrans and design-builder meet quarterly to monitor compliance with the plan and to evaluate progress towards the project goal. Division of Design collects the monthly reports and tracks progress for each design-build project and reports as required on the semi-annual Uniform Reports.

Division of Procurement and Contracts:

The Caltrans Contract Manager is responsible for monitoring the Contractor for compliance with program requirements.

Caltrans' Contract Manager monitors the contract until it has concluded. Exhibit B, Invoice and Payment instructs the Contractor to submit the Disadvantaged Business Enterprise Utilization Report (ADM-3069) with each invoice (§26.37(c)).

The Caltrans Contract Manager is instructed to "review the form as submitted by the Contractor to ensure the form is complete and accurate. Once you receive the ADM-3069 from the Contractor, enter the total (or percent) of Federal (only) dollars (being used in the Agreement) on the form, then sign, date, and Email smallbusinessadvocate@dot.ca.gov or FAX to 916-324-1949."

Division of Local Assistance:

DLA-HQ monitors subrecipients by conducting annual Compliance Reviews of preselected subrecipients. These subrecipients may be selected based on some of the following criteria: USDOT-assisted awards in the past 5 years, number of closed and active contracts, size, and previous red flags. The subrecipients are reviewed on their DBE, Title VI, and ADA compliance. DLA-HQ submits a Compliance Review Report to OBEO and FHWA. Among other documents, the Compliance Review includes the local agency "Master Agreement", "DBE Program Implementation Agreement", "DBE Annual Submittal Form", and "DBE Annual Submittal Form."

The Resident Engineer approves Exhibit 16-B Subcontracting Request submitted by the contractor to verify that the prime is using the same subs listed on his bid documents and performing the same type of work for which they are committed. The inspector verifies that all the subcontractors commence work only approved by the RE since he/she has copies of all approved Exhibit 16-B Subcontracting Requests. Inspector also monitor that the approved DBE sub is performing a Commercial Useful Function (CUF).

Inspectors' diaries and district project files have all required documentation. Construction Oversight Engineers verify through mid/post construction reviews that the project files has all completed documentation regarding DBE compliance. Geographical Assistant DLAEs will be involved in case of substitution and reviewing submitted DBE forms by the agencies such as Exhibits 17-F & 15-G (§26.37(c)).

Policy and Reports Branch:

The Policy and Reports Branch Collects the following forms as it relates to DBE reporting:

- DES-OE-0102.10D DBE Commitment (Construction)
- CEM 2402F Final Report-Utilization of Disadvantaged Business Enterprises First Tier Subcontractors (Construction)
- CEM 2406 Monthly Disadvantaged Business Enterprises (DBE) Payment (Construction)
- ADM 227F-AE Disadvantaged Business Enterprise (DBE) Information for A&E Contracts (DPAC)
- ADM 3069-AE Disadvantaged Business Enterprises Utilization Report (DPAC)
- Exhibit 10-02-Consultant Contract DBE Commitment (Local Assistance)
- Exhibit 15-G-Local Agency Bidder DBE Commitment Construction Contracts (Local Assistance)
- Exhibit 17-F Final Report Utilization Disadvantaged Business Enterprises (DBE) and First Tier Subcontractors (Local Assistance)

All DBE commitment forms are received by the Policy and Reports Branch on a monthly basis. These commitment forms are provided by the Contract Evaluation Branch after the commitment has been approved or adjusted, this is done to ensure that the "Monthly Commitment at Awards" report provided by this branch only contains the most accurate information.

The monthly payment reports submitted to the Policy and Reports Branch are tracked throughout the life of the contract. The DBE Data Coordinator, with the Policy and Reports Branch, ensures accuracy of the data provided by the reporting divisions prior to including the information into the semi-annual uniform report.

Once a contract is reported as "accepted" the Policy and Reports Branch begins reaching out to the appropriate Resident Engineer or Contract Manager to remind them for the need of the CEM 2402F or ADM 3069. This information is reported in January of each year for all closed federal contracts from the previous Federal Fiscal Year.

Caltrans reserves the right to enforce payment deductions or withholds from a prime contractor/consultant for lack of contract compliance when failing to provide the required forms in a timely manner.

E. 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 K.

I. Goals, Good Faith Efforts, and Counting

A. Set-asides or Quotas §26.43

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

B. Overall Goals §26.45

A description of the methodology to calculate the overall goal and the goal calculations can be found on the OEBO Web site at: <u>http://www.dot.ca.gov/obeo/</u>. This section of the program will be updated on a triennial basis and any time there is an adjustment made to the overall goal.

In accordance with §26.45(f) Caltrans will submit its overall goal to the DOT no later than August 1, of each triennial year. Caltrans' next proposed triennial goal and methodology are due to USDOT by August 1, 2018. Before establishing the triennial goal, Caltrans will consult with its contracted Disparity Study consultant to obtain the relevant information concerning the current availability of disadvantaged and nondisadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Caltrans' efforts to establish a level playing field for the participation of DBEs on it contracting and procurement opportunities. Simultaneously, Caltrans will consult with minority, women's and general contractor groups, community organizations.

Following the consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rational are available for review during normal business hours at all Caltrans principal offices throughout the state and online, for 30 days following the date of the notice. Caltrans will also inform the public that we will accept comments of the proposed goal and methodology for no less than 30 days from the date of the notice.

A description of the methodology to calculate the overall goal and the goal calculations can be found on the OEBO Web site at: <u>http://www.dot.ca.gov/obeo/</u>. This section of the program will be updated on a triennial basis and any time there is an adjustment made to the overall goal.

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C. Shortfall Analysis §26.47(c)

Should Caltrans fall short of achieving its overall DBE goal by the end of each Federal Fiscal Year, a shortfall analysis must be submitted to the FHWA by December 31, of that year. This document, is signed by Caltrans' Director, provides an analysis of Caltrans' efforts in an attempt to meet the goal, what contributing efforts may have played a role in the shortfall, as well as outline corrective actions to achieve the goal in the upcoming year.

D. Breakout of Estimated Race-Neutral and Race-Conscious Participation §26.51(a-c)

The current breakout of estimated race-neutral and race-conscious participation can be found in Attachment J to this program. This section of the program will be updated triennially and monitored and adjusted based on monthly monitoring described in Section 26.11 to adjust contract goals to enable Caltrans to meet its overall DBE goal.

E. Contract Goals §26.51(d-g)

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 contract goals will be based on each 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 applicable contracts, procurements, and grants with subcontracting opportunities.

The OBEO approves DBE contract goals on contracts from the following divisions: Division of Engineering Services, Divisions of Design, Division of Procurement and Contracts as well as Head Quarters and District staff.

The OBEO also reviews and approves subrecipient DBE contract goals for Caltrans' Division of Local Assistance (DLA). Per DLA-OB 14-06, subrecipients submit their DBE contract goals for construction contracts over \$2 million and consultant contracts over \$500,000 for Caltrans' review. Caltrans will either approve the DBE goal or recommend an adjustment. <u>http://www.dot.ca.gov/hq/LocalPrograms/lam/CH09.htm</u>

It is the responsibility of the OBEO to set and approve DBE contract goals prior to advertisement on major construction, A&E, and professional services contracts. DBE contract goals are calculated for each project based on subcontracting opportunities and
DBE availability, and includes a factor to account for an abundance of DBE firms. A search for DBE availability is conducted on the CUCP database, using relevant work codes and the district the project is located in.

F. Good Faith Efforts and Procedures §26.53

Demonstration of Good Faith Efforts §26.53(a)(c)

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting god faith efforts.

Caltrans' OBEO, Contract Evaluation Branch (CEB) reviews all DBE commitment information submitted as a result of bid when a contract goal is assigned. When reviewing a good faith effort submission, CEB reviews several factors in determining whether a bidder has demonstrated adequate good faith efforts to meet the contract goal.

<u>DBE information that bidders must submit by the 4th business day of bid opening and within 5 days of bid opening starting on 1/1/17 include but are not limited to:</u>

- The Bidders' Overall DBE Commitment,
- The Total of Goods and Services Made Available to DBE Firms,
- The Quantity of DBE Solicitations Made,
- Reason(s) for Rejecting DBE Quotes,
- The Relative DBE Commitments and Good Faith Efforts Made by Other Bidders.

In its determination, the CEB ensures the completeness and accuracy of documents such as the contact lists, publication proof, solicitation letters, fax/email transmissions, and quotes from DBEs and non-DBEs.

For trucking bid items the CEB will verify the DBE trucking firm is certified to perform the work. The CEB will contact the bidder to determine how it used the DBE's quote to arrive at its commitment amount. The CEB will question the bidder on how many and what types of trucks are needed to do the work and the number of trucks owned by the DBE trucker. The CEB will get copies of the current registration(s) or nonoperating permit(s) for each truck. CEB will ask the bidder if the DBE trucker will be brokering any trucks, if so verify the certification, registration(s) and non-use permit(s) and brokerage fee credit for non-DBE trucks.

For DBE bulk suppliers CEB will verify the DBE has enough trucks or existing lease agreements for enough trucks to perform the work. CEB will also have the DBE sign a written declaration declaring their drivers will be driving the leased trucks. CEB will get clarification on the origin and destination of the materials to be supplied. CEB will question the bidder on who will be paying for the material.

Once a determination is made CEB writes a letter with its findings and supporting data to the awarding division and bidder. Should the good faith effort of a bidder be rejected

the CEB will include in their decision letter the areas of deficiency by the bidder. This may include, but not limited to, bidder comparison of DBE quotes accepted by another bidder/proposer, list of available DBEs based on the work codes and work area in the CUCP database,

Per the Division of Local Assistance (DLA) Office Bulletin 14-06 CEB provides review and feedback on local agencies' GFE determinations of the bidder/proposer's. CEB applies the same criteria they do in their own evaluations. CEB review the GFE determination of the local agency, and we analysis the bidders/proposer's GFE submittal to the local agency. CEB will draft a memo either concurring or not concurring with their determination. CEB will provide feedback on improving the local agencies GFE evaluation when applicable.

Design-Build contracts require a slightly different Good Faith Effort documentation process. Instructions to Proposers of the RFP directs all proposers to submit a DBE Performance Plan which includes 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 DBE firms have been selected and the areas DBE firms are anticipated to be used. It is the proposer's responsibility to demonstrate 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 at minimum demonstrate the proposers intent to meet the contract goal) when fully implemented, results 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 submit good faith efforts documentation demonstrating their efforts to achieve the DBE goal up to the proposal due date.

Administrative Reconsideration §26.53(d)

The following awarding division's contracts may be subject to Administrative Reconsideration with the Caltrans Reconsideration Panel:

- Division of Engineering, Contract Awards
- Division of Procurement and Contracts
- Division of Design, Design-Build

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 Division of Engineering Services – Office Engineer 1801 30th Street, MS-9 Sacramento, CA 95816-8041

Please note, the Division of Design, Design-Build contracts Administrative Reconsideration process varies slightly. Design-Build receives a request for reconsideration directly from the proposer. There is also the possibility of a second reconsideration at the end of the project if the proposer fails to meet its DBE Performance Plan and there is a finding of no GFE when the contract is closed out.

Three high level Caltrans Division/Office representatives make up the three-person panel. Those representatives are provided by the Division of Local Assistance, the Office of Business and Economic Opportunity, and the Division of Engineering, Contract Awards. The Division of Engineering, Contract Awards Chief chairs the Administrative Reconsideration Panel providing the final decision on behalf of the 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.

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. 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.

Subrecipients may follow a similar approach to the Good Faith Administrative Reconsideration process. The subrecipient must not allow the initial GFE decision making person or staff, to participate in the reconsideration process. The subrecipient will notify the bidder/proposer of the initial GFE findings, giving them the opportunity to request a reconsideration hearing.

Administrative Remedies for noncompliance §26.53(f)(3)

The following is the applicable processes if the contractor fails or refuses to comply in with the substitution process in the specified time, must provide a warning to the contractor. If the first warning is provided verbally the resident engineer or contract manager must document the warning in their daily contract reports.

If the prime contractor replaces a listed DBE without written approval from the resident engineer, payment for the items of work committed to the DBE must be temporarily withheld from the next progress payment. Send the prime contractor written notice of the improper substitution and payment withhold. In addition, if the DBE is also a subcontractor required to be listed at bid time by the Fair Practices Act, the substitution process must comply with Section 3-507C (5), "Hearing Process for Substitution Violations," of this manual.

If the substitution is found to be in violation of the Fair Practices Act, the hearing officer may assess the prime contractor a penalty of up to 10 percent of the subcontract amount. Any temporary withholds become permanent when a violation is confirmed. Federally funded contracts require the contractor to report a DBE firm that becomes certified or decertified during the course of the project. A DBE subcontractor that becomes decertified during the course of the project must notify the contractor in writing with the date of decertification. In the same manner, a subcontractor in writing with the date of certification. The project must notify the contractor in writing with the date of certification. The project must notify the resident engineer if the contractor becomes aware of a DBE obtaining or losing its certification during construction.

The contractor must still honor contractual commitments with a DBE firm performing work on the contract even if the DBE loses its certification during construction. No substitution is required. For federal reporting purposes only, DBE credit for Caltrans will be limited to payments made while the firm was certified. This has no effect on the Form CEM- 2402F, "Final Report - Utilization of Disadvantaged Business Enterprises First-Tier Subcontractors," which should show the total paid to the DBE. For additional information on the final report, refer to Section 8-305A below (see Construction Manual at:

http://www.dot.ca.gov/hq/construc/constmanual/construction_manual.pdf.)

Good Faith Efforts when a DBE is replaced on a contract §26.53(f)(g)

Caltrans and its subrecipients will require a contractor to make good faith efforts to replace a DBE that is terminated or otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. Contractors are required to notify the contracts Resident Engineer or Contract Manager immediately of the DBE's inability or unwillingness to perform or provide reasonable documentation.

The contractor is required to obtain prior approval of the substitute DBE from the contract administrator, these approvals come from either the Resident Engineer or Contract Manager for Caltrans contracts. Should the contractor be unsuccessful in replacing the committed DBE with another DBE than it is the responsibility of the resident engineer or contract manager, to ensure the contractor has submitted sufficient documentation of good faith efforts? If the contractor is able to replace the committed DBE with another DBE the resident engineer must collect copies of the new or amended subcontracts.

Per the Caltrans 2015 Standard Specifications; Section 5-1.13B(2) Disadvantaged Business Enterprises:

http://www.dot.ca.gov/hq/esc/oe/construction_contract_standards/std_specs/2015_Std Specs/2015_StdSpecs.pdf. The contractor is required to notify the original DBE of your intent to use other forces or material sources and provide the reasons. Provide the DBE with 5 business days to respond to your notice and advise you and the Department 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 or more of the reasons listed in the preceding paragraph;
- Notices from you to the DBE regarding the request; and
- Notices from the DBE to you regarding the request.

If the Department authorizes the termination or substitution of a listed DBE, make good faith efforts to find another DBE. 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 your request for substitution. Submit your documentation of good faith efforts within 7 days of your request for authorization of the substitution. The Department may authorize a 7-day extension of this submittal period at your request. Refer to 49 CFR 26 app A for guidance regarding evaluation of good faith efforts to meet the DBE goal.

According to Section 5 Control of Work - 42

Unless the Department authorizes a request to terminate or substitute a listed DBE, the Department does not pay for work unless it is performed or supplied by the DBE listed on the DBE Commitment form. You may be subject to other sanctions under 49 CFR 26.

It is the responsibility of Caltrans' construction staff to either approve or deny any Good Faith Efforts submitted in an attempt to substitute a DBE on a contract. A copy of the GFE and all relevant documentation, including the approval or denial of the GFE are to be kept in the contract file and reported to the Policy and Reports Branch for tracking.

DBE Prime Credit §26.53(i)

If the bidder is a DBE firm, the CEB will review the firm's DBE certification. The CEB will review the work codes assigned to the DBE firm and compare the codes to the bid items on the contract. The DBE bidder must be certified to perform/provide at least 30 percent of the work on the project. On average the DBE prime most likely has met the DBE goal with their own forces.

Subcontracts §26.53(j)

Caltrans contracts will require the contractor awarded a USDOT-assistedsx007AAA contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions

G. Counting DBE Participation §26.55(a-h)

Caltrans counts DBE participation toward the departments overall and contact goals as provided in the regulations. Caltrans has incorporated the DBE credit application in to its Standard Specification, boiler plate contract language and subrecipient guidance. The following are excerpts from the Caltrans' contracting language:

 Division of Construction: Standard Specifications 2-1.12B Disadvantaged Business Enterprise Goal, Section 2-1.12B (1) General (http://www.dot.ca.gov/des/oe/construction-contract-standards.html)
 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.

DBE Trucking Credit information can be found on page 34 of this program plan.

- Division of Procurement and Contracts (Non-A&E & Service Contracts): Non-A&E Boiler Plate Contract Language – DBE Credit

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
- C. 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.
- D. 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.

DBE Trucking Credit information can be found on page 34 of this program plan.

- Division of Procurement of Contracts (Architectural & Engineering): A&E Boiler Plate Language

A&E Contract Boilerplate Language

A. Credit for DBE Prime Consultants

Consultant, 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 Subconsultants. (See Attachment H.).

Additional Measure for Properly Counting DBE toward Contract Goal Credit:

The Contract Evaluation Branch ensures all DBE firms listed for credit on a USDOTassisted contract is currently certified at the time of bid opening. At the same time verifying the firm has all of the relevant licenses and work codes for the work they have been listed to perform for DBE credit.

Caltrans' Certification Branch aligns work codes closely to NAICS codes and licenses held by the disadvantaged business owner(s). These work codes were developed by the Caltrans Certification Staff within and are meant to be narrowly tailored towards Caltrans applicable work. Codes are only assigned, as part of the certification process, on approval of the firm's certification after a comprehensive review of the firm's primary activities and a site visit has been conducted based on 49 CFR Part 26. Additional work codes (and NAICS codes) are assigned during the life of the firm upon their request, but only after additional review with supporting documentation of their ability to perform the requested work code(s) and justification for the additional codes being sought. Another site visit may be conducted on an as needed basis.

These initial efforts by the Certification Branch to verify applicable work codes assigned to the certified DBE firms, helps to ensure the Contract Evaluation Branch as well as the bidder/offeror are able to verify the firm's capabilities prior to commitment and contract award. A supplier's role as a regular dealer or broker is evaluated on a "project by project" basis. For the database holding the work codes and correlating NAICS codes please visit the OBEO Web site at: <u>http://www.dot.ca.gov/hq/bep/find_certified.htm.</u>

Joint Ventures §26.55(b)

The DBE joint venture partner must share in the capital contributions, control, management, risks and profits of the joint venture. The prime contractor who wishes to use a DBE joint venture must attach and submit the joint venture agreement.

DBE Commercially Useful Function §26.55(c)

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.

Once a contract is awarded Caltrans monitors projects for DBE commercially useful function. The following information provides insight into how Caltrans' contracts and subrecipient contracts are monitored:

Division of Construction: Commercially Useful Function Process

The resident engineer is responsible for monitoring and recording a daily report on Form CEM-4501, "Resident Engineer's Daily Report/Assistant Resident Engineer's Daily Report." This form shall include any information that may be pertinent even though no activity may have occurred.

The resident engineer must identify if/when the DBE firm other than the listed DBE is found performing the work, the RE notifies the prime contractor immediately, in writing, that an apparent violation is taking place. An administrative hold is 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.

Payment is not made for non-approved DBE work until the RE approves a request for a substitution. RE or Labor Compliance sends the prime contractor a letter, which gives the reasons for the deduction, and information needed if the prime contractor wants to pursue the appropriate substitution process.

2014 Caltrans Construction Manual – Section 8-302A

http://www.dot.ca.gov/hq/construc/constmanual/chapter8/sec8-3.pdf

8-302A Commercially Useful Function - a DBE performs a commercially useful function when it does all of the following (as detailed in the Code of Federal Regulations Section 26.55[c]):

- 1. 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.
- 2. Performs, manages, and supervises the work involved.

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

Division of Procurement and Contracts Non-A&E: Boiler Plate Language -Performance of DBE Contractors and other DBE Subcontractors/Suppliers (See Attachment G.)

- 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 (See Attachment D.), 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 23 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.

Division of Local Assistance: Commercially Useful Function Procedures

Local Agency Procedures Manual – Chapter 9.7 <u>http://www.dot.ca.gov/hq/LocalPrograms/lam/lapm.htm</u>

The following procedures are outlined in Chapter 9.7 of the LAPM: Count expenditures to a DBE contractor, only if the DBE is performing a commercially

useful function on that contract. The following examples explain what is considered to be performing a commercially useful function:

- A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the contract for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the local agency must evaluate the amount of work subcontracted; industry practices; whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work; and other relevant factors.
- A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the local agency must examine similar transactions, particularly those in which DBEs do not participate.
- If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.
- When a DBE is presumed not to be performing a commercially useful function, as provided in the previous bullet, the DBE may present evidence to rebut this presumption. The local agency's determination as to whether the firm is performing a commercially useful function should be based upon the type of work involved and normal industry practices.
- Local agencies' decision on commercially useful function matters are subject to review by the DLAE.

Additional Monitoring and Enforcement Mechanisms

The OBEO's, Compliance Branch will investigate claims of DBE noncompliance of commercially useful function on a USDOT assisted Caltrans project. Findings of these claims are reported to the OBEO Assistance Director, so may the Division of Construction; Caltrans Legal Department; Division of Construction, Labor Compliance; Office of Audits and Investigations; and FHWA. Depending on relevance and severity of noncompliance Caltrans Compliance Branch may also send their findings to the Office of the Inspector General, California State Licensing Board, and any other applicable local entities for further review and/or corrective action.

DBE Trucking §26.55(d)

At the time of DBE commitment, and prior to award, the OBEO's Contract Evaluation Branch contacts the bidder to determine how the trucking firm is quoted for use to ascertain the appropriate commitment credit. The Contract Evaluation Branch will research and ask the DBE trucking firm and the bidding contractor/proposer, at minimum, the following questions:

- The number of trucks needed to perform the committed work?
- How many trucks are owned by the DBE trucker?
- Obtain copies of registration(s) or non-operating permits for each truck?

FHWA allows the bidder to get credit only for work that can be performed by the DBE's trucks, as verified by registration(s) or non-operating permits, and brokerage fee credit for non-DBE trucks. "One-for-One" is not allowed on trucking when being used toward the contract goal.

For suppliers of bulk materials, the DBE must own at least one truck; other trucks, used to perform the work committed to by the DBE, must be a long term lease. Oil suppliers have been asked to provide a form affirming that only the businesses own forces will operate machinery and transport the materials.

Division of Construction: DBE trucking credit is described in the Caltrans 2015 Standard Specifications – Section 2-1.12B (1):

<u>http://www.dot.ca.gov/hq/esc/oe/construction_contract_standards/std_specs/2015</u> <u>StdSpecs/2015_StdSpecs.pdf</u>

A contractor may 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 owneroperator 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

Division of Procurement and Contracts (Non A&E Contracts): Boiler Plate Language – (See Attachment G.)

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 owneroperator 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 owneroperator. 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.

DBE Credit to a Non-DBE & DBE Ceases to be Certified §26.55(f)(g)

Caltrans ensures no contractor/proposer will be given DBE credit toward contract goal commitment if a firm is not certified as a DBE at the time of contract execution. The Contract Evaluation Branch confirms all committed DBEs toward commitment goal credit are certified with the applicable licenses and work codes.

The Contract Evaluation Branch and the Policy and Reports Branch, keep records of the suspension, removal of certification, or removal of applicable work codes for the certified firm. The Policy and Report Branch ensure no reported participation of a DBE is counted toward goal credit for that contract unless a DBE subcontract is already executed.

Counting DBE Participation and Contract Goal Credit §26.55(g)

Caltrans ensures that only the DBE participation toward the contract goal credit is not counted until the "Disadvantaged Business Enterprise (DBE) Final Utilization Report" is submitted once the contract has been accepted and prior to the final payment released to the contractor/proposer.

The following forms are collected:

- "Disadvantaged Business Enterprise (DBE) Final Utilization Report" CEM-2402F, Division of Construction contracts
- "Disadvantaged Business Enterprise (DBE) Final Utilization Report" 3069F, Division of Procurement and Contracts

Should a contractor not comply with the timely submittal of the DBE Final Utilization Report, Caltrans has the ability to withhold from the final payment to the contractor. No contract goal credit will be given until payment is made.

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

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, webbased 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.

ATTACHMENTS

CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTABED BUSINESS ENTERPRISE PROGRAM PLAN

ATTACHMENT A

Caltrans Executive Branch Organizational Chart



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

California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT B

Office of Business and Economic Opportunity Organizational Chart



California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT C

List of Internet and Website Addresses

CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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

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

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

The DGS publishes advertisement 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/hq/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.html

California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT D

DBE Awards and Commitments Form

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION **DBE - COMMITMENT** DES-0E-0102.10D (REV 12/2014)

CONTRACT NO: BID AMOUNT: \$ **BID OPENING DATE:** BIDDER'S NAME: DBE GOAL FROM CONTRACT %: DBE PRIME CONTRACTOR CERTIFICATION¹ TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE) TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE) NAME OF DBEs ITEM OF WORK AND DESCRIPTION OF (Must be certified on the date bids are WORK CATEGORY BID AMOUNT SERVICES TO BE SUBCONTRACTED OR opened. Include Caltrans' certification no., DBE ITEM NO. CODES³ (\$) address, and phone number. Show 2nd and MATERIALS TO BE PROVIDED² lower tier subcontractors) 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 Total Claimed shown for the specific amount agreed to. Participation 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.). % The bidder acknowledges that it is committed to use the DBEs shown on this form to meet the contract goal (49 CFR ¹Each DBE prime contractor must enter its certification number and show all work to be performed by DBEs, including work performed by its own forces. 26.53). ²If 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. ³Use Work Category Codes from the California Unified Certification Program database. Signature of Bidder Date (Area Code) Tel. No. Person to Contact (Please Type or Print)

								>>>>TT	
(A1) CONTRACTOR'S BUSINESS NAME				(A2) AGREEMENT	T NUMBER (A3) C	ONTRACT D	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)	(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.)	TATION (Refer to In	ıstruc	ions in Page 2 of this form	n. Bidder/Propos	er shall verify DBE	certification	is or UDBE firms a	re certified as D	BEs .)
(1) List Name(s) and addresses of all DBEs/UDBEs that will participate in this Agreement:	(2) Area Code & Phone Number	Tier (3)	(4) Description of Work, Service, or Materials Supplied	f Work, s 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 <i>EXAMPLE</i> Jane Prime Inc., 1234 Jane's Street, Jane's City, CA, 04321	(XXX) 000-1111	0	Project management	ement	XXXXXXXX	7,5	48,000	48%	
2B EXAMPLE Joe Subcontractor Inc., 4567 Joe's Street, Joe's City, CA, 07654	(XXX) 111-0000	-	Design, Surveys, environmental testing	nmental 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	sting materials	1111111111111	ω	10,000	10%	
								ø	
PART C - FOR CALTRANS USE ONLY (Verification Completed by Civil Rights, Office of Business and Economic Opportunity):	ompleted by Civil F	lights	Office of Business and Ec	conomic Opport	unity):				
(C1) PRINT VERIFIER'S NAME AND TITLE	(C1)	SIGN	(C1) SIGNATURE		(C2) DATE	0	(C3) CIVIL RIGHTS STAMP OF APPROVAL	STAMP OF APPF	ROVAL
(C4) DBE Participation YES (%) ON [(0	5) UC	(C5) UDBE Participation YES	(%)	NO				

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

ADM-0227F (REV 10/2009) Page 2 of 2 (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

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.

(A1) CONSULTANT'S BUSINESS NAME			(A2) AGREEMENT NUMBER	(A3) ADVERTISED DBE%	SED DBE%		(A4) DATE	
(A1) CONSULTANT'S BUSINESS ADDRESS			(A1) CITY	(A1) STATE			(A1) ZIP CODE	
(A1) CONTACT PERSON		(A1) E	(A1) BUSINESS PHONE (A1) FAX NUMBER	(A1) EMAIL ADDRESS	DRESS			
PART B - DBE INFORMATION AND DOCUMENTATION (Refer to Instructions on Page 2 of this form. Proposer shall verify	N (Refer to Instruction	ons on	age 2 of this form. Proposer shall verify DBE certifications.)	tions.)				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
List Name(s) and addresses of all DBEs that will participate in this Agreement	Area Code & Phone Number	Tier	Description of Work, Service, or Materials Supplied	CUCP Certification Number	Work Category Code	Ownership Code	Percentage Committed	Top Ranked Firm Use Only
								-
						÷		
L								
								£
							-	
-			•	÷	9 Q			
THE CONSULTANT ACKNOWLEDGES THAT IT MUS	T USE THE DBEs LI	STED	THE CONSULTANT ACKNOWLEDGES THAT IT MUST USE THE DBES LISTED ON THIS FORM TO MEET ITS DBE CONTRACT COMMITMENT (49 CFR 26.53)	MENT (49 CFF	₹ 26.53)			
CONSULTANT REPRESENTATIVE'S SIGNATURE			DATE		÷,	l		
CONSULTANT REPRESENTATIVE'S PRINTED NAME								

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

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, <u>http://www.dot.ca.gov/hq/bep/find_certified.htm</u>, 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 American4 = Asian-Pacific American7 = Woman2 = Hispanic American5 = Subcontinent Asian American8 = Other3 = Native American6 = Caucasian9 = 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.

California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT E

ADM 3069 Form DBE Utilization Report

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISES UTILIZATION REPORT

ADM-3069 (NEW 06/2011)

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.

CONTRACT NUMBER	INVOICE NUMBER	TASK ORDER NUMBER (if applicable)	ADMINISTERING AGENCY Department of Transportation			CONTRACT STAF	RT DATE CO	ONTRACT COMPLETI	ON DATE
			Division of Procurement and						
PRIME CONTRACTOR NAM	AE (PRINT)		BUSINESS ADDRESS			TOTAL CONTRAC	T AMOUNT:	\$	
						Contra	ict Manager Mus	t Complete This Sect	ion:
PRIME CONTRACTOR REP	PRESENTATIVE NAME (PRINT)					Total Federal Shar	e Amount \$	OR	%
	DESCRIPTION OF	COMPANY NAME	DBE CERTIFICATION		OWNERSHIP	CONTRAC	T PAYMENTS	DATE WORK	PAYMENT
NO.	WORK PERFORMED AND MATERIEL PROVIDED	AND BUSINESS ADDRESS	NUMBER	GENDER	CODES(S)	NON-DBE	DBE	COMPLETE	DATE
0						\$	\$		
						\$	\$		
						\$	\$		
						\$	\$		
						\$.	\$		
					ũ	\$	\$		
						\$	\$		
RIGINAL COMMITMENT OWNERSHIP CODES:		TOTAL			\$	\$			
\$	OR	% 1= Black American 2= Hispanic American	1= Black American 6= Caucasian 2= Hispanic American 7= Woman		Comments	1			
0	UDBE	3= Native American 4= Asian Pacific American	8= Other 9= Not Applicat	ble					
\$	OR	% 5= Subcontinent Asian America		016					
	DBE	rprises (DBEs) regardless of tier, w							

that approved at the time of award, provide comments. List actual amount paid to each entity.

I CERTIFY THAT T	HE ABOVE INFORMATION IS COMPLETE AND CORRECT	
CONTRACTOR REPRESENTATIVE'S SIGNATURE	BUSINESS PHONE NUMBER	DATE
TO THE BEST OF MY INFORMATION	NAND BELIEF, THE ABOVE INFORMATION IS COMPLETE AND CORRECT	
CONTRACT MANAGER'S SIGNATURE	BUSINESS PHONE NUMBER	DATE

COPY DISTRIBUTION (Required): (1) Original: Con

(1) Original: Contract Manager

(2) Copy: Office of Business and Economic Opportunity, Email: to smallbusinessadvocate@dot.ca.gov or FAX to 916-324-1949

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISES UTILIZATION REPORT

ADM-3069 (NEW 06/2011)

Contractor Instructions:

This form must be completed and submitted to the Caltrans Contract Manager with each invoice. Enter the Contract Number, Invoice Number, Task Order Number (if applicable), Contract Start Date, Completion Date (Expiration Date), Prime Contractor Name, Prime Contractor Business Address, Total Contract Amount (as written on the STD. 213).

This form has two columns for entering the dollar value for the item(s) of work performed or provided by the firm. The Non-DBE column is used to enter the dollar value of work performed by subcontracting firms who are not certified DBE. The DBE column is used to enter the dollar value of work performed only by certified DBE firms.

DBE prime contractors are required to show the corresponding dollar value of work performed by their own forces.

To confirm the certification status of a DBE, access the Department of Transportation, Office of Business and Economic Opportunity website at http://www.dot.ca.gov/hg/bep/find_certified.htm or call toll free (866) 810-6346 or (916) 324-1700.

If a contractor performing work as a DBE becomes decertified and still performs work after the decertification date, enter the total value performed by this contractor in the DBE column for the certification period and the remaining work or services (after decertification) in the Non-DBE column. If a subcontractor performing work as a non-DBE on the project becomes certified as a DBE, enter the dollar value of all work performed after certification as a DBE in the appropriate column.

Date Work Complete Column: Enter the date the work and/or Task order was completed for the respective pay period. Date of Payment column: Enter the date when the prime contractor made the payment to the firm for the portion of work listed as being completed. DBE prime contractors are required to show the date of work performed by their own forces.

Contractor's Signature: Contractor certifies that the information on the ADM-3069 is complete and correct.

Contract Manager's Instructions:

Review the form as submitted by the Contractor to ensure the form is complete and accurate. Once you receive the ADM-3069 from the Contractor, enter the total (or percent) of **Federal (only) dollars** (being used in the Agreement) on the form, then sign, date, and Email to smallbusinessadvocate@dot.ca.gov or FAX to 916-324-1949.

California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT F

Division of Design (Design-Build Contracts): Boiler Plate section 7.1.1 Equal Employment Opportunity Policy



STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

DESIGN-BUILD CONTRACT BOOK 1

FOR CONSTRUCTION ON STATE HIGHWAY IN

[Project Description/Limits]

DISTRICT ##, ROUTE ##

CONTRACT NO. DD-####### Dist-Co-Rte-PM

> Federal Aid Project ########

Proposals Due: [Due Date] Dated: [Document Date]

7 EQUAL EMPLOYMENT OPPORTUNITY; SUBCONTRACTS; LABOR

7.1 Equal Employment Opportunity

7.1.1 Equal Employment Opportunity Policy

Design-Builder shall comply with the Equal Employment Opportunity (EEO) requirements set forth in Exhibits D and F.

Under 49 CFR 26.13(b), Design-Builder and each Subcontractor or Subconsultant must comply with the following:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of 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 the recipient deems appropriate, which may include, but is not limited to:

- 1. Withholding monthly progress payments;
- 2. Assessing sanctions;
- 3. Liquidated damages; and/or
- 4. Disqualifying the contractor from future bidding as non-responsible.

Design-Builder shall include this language in each subcontract.

7.1.2 Inclusion in Subcontracts

Design-Builder shall include Sections 7.1.1 and Exhibits D and F in every Subcontract over 10,000 (including purchase orders), and shall require that they be included in all Subcontracts over 10,000 at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.2 Disadvantaged Business Enterprises

7.2.1 Disadvantaged Business Enterprises Policy

Design-Builder shall comply with the requirements set forth in Exhibit E.

7.2.2 Inclusion in Subcontracts

Design-Builder shall include Section 7.2.1 and Exhibit E in every Subcontract (including purchase orders), and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor.

7.3 Subcontracting Requirements

Design-Builder shall comply with all applicable requirements of the Contract Documents relating to Subcontracts (including Exhibits D, E and F), and shall ensure that its Subcontractors (at all tiers) comply with all applicable requirements of the Contract Documents relating to subcontracting (including Exhibits D, E and F).

7.3.1 Major Participants

Design-Builder shall not add, delete, or change the role of, any Major Participant as set forth in its Proposal without the prior Approval of Department.

7.3.2 Assignment of Subcontract Rights

Each Subcontract shall provide that, pursuant to terms in form and substance satisfactory to Department, (a) Department is a third party beneficiary of the Subcontract and shall have the right to enforce all terms of the Subcontract for its own benefit, (b) all guarantees and warranties, express and implied, shall inure to the benefit of Department, its successors and assigns, as well as Design-Builder, and (c) the rights of Design-Builder under such instrument are assigned to Department contingent upon delivery of written request from Department following default by Design-Builder or termination or expiration of the Contract, allowing Department to assume the benefit of Design-Builder's rights with liability only for those remaining obligations of Design-Builder accruing after the date of assumption by Department, but shall not release or relieve Design-Builder from its obligations or liabilities under the assigned Subcontract.

7.3.3 Subcontract Terms

Each Subcontract shall include terms and conditions sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, and shall include provisions addressing the following requirements as well as any other terms that are specifically required by the Contract Documents to be included therein. Each Subcontract shall include terms that are substantially similar to those terms required by <u>Sections 5.1, 5.2, 5.3, 5.4, 7.1 (as appropriate), 7.2, 7.3.1, 7.4.3, 10.1, 13.7, 14, 15, 19, 20.3 and 23.6 and Exhibits D (as appropriate), E, and F (as appropriate), specifically including an agreement by the Subcontract to be joined in any dispute resolution proceeding pursuant to <u>Section 19</u> if such joinder is reasonably necessary to resolve the dispute; and each Subcontract other than Subcontracts with Suppliers shall include terms that are substantially similar to those contained in <u>Sections 2.2(e), 2.2(f), 2.2(h), 2.3.1, 21.3, 22.2 (as appropriate), 22.3 and 22.4</u>.</u>

7.3.4 Subcontract Data

Design-Builder shall notify Department, in writing, of the name and address of, licenses held by, and any insurance documents required pursuant to <u>Section 9</u> of, each Subcontractor (excluding Suppliers), as soon as the potential Subcontractor has been identified by Design-Builder, but in no event less than 14 Days prior to the scheduled initiation of Work by such proposed Subcontractor.

Design-Builder shall provide requests to sublet any portion of the Contract to Department on a form provided by Department, at least 10 Days in advance of the date on which the Subcontractor intends to start work. Design-Builder shall allow Department access to all Subcontracts and records regarding Subcontracts within 7 Days following receipt of Department's request. All Subcontracts shall be in writing and shall include design costs (if applicable).

7.3.5 Responsibility for Work by Subcontractors

Notwithstanding any Subcontract or agreement with any Subcontractor, Design-Builder shall be fully responsible for all of the Work. Department shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind Department. Each Subcontract shall include the following provision:

Nothing contained herein shall be deemed to create any privity of contract between the State of California through its Director of Transportation (Department) and Subcontractor, nor does it create any duties, obligations or liabilities on the part of Department to Subcontractor except those allowed under California law. In the event of any claim or dispute arising under this Subcontract and/or Design-Builder's contract with Department, Subcontractor shall look only to Design-Builder for any payment, redress, relief or other satisfaction. Subcontractor hereby waives any claim or cause of action against Department arising out of this Subcontract or otherwise arising in connection with Subcontractor's work.
7.3.6 Subcontract Work

Design-Builder shall coordinate the Work performed by Subcontractors.

7.3.7 Debarred Subcontractors

Design-Builder shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

7.4 Key Personnel; Character of Workers

7.4.1 Key Personnel

<u>Exhibit G</u> hereto identifies certain key positions for the Project. Department shall have the right to review the qualifications and character of each individual to be assigned to a key position (including personnel employed by Subcontractors) and to Approve or disapprove use of such key person in such key position prior to the commencement of any Work by such individual or during the prosecution of the Work. Design-Builder shall notify Department in writing of any proposed changes in any Key Personnel, and shall not change any Key Personnel without the prior written Approval of Department.

7.4.2 Representations, Warranties and Covenants

Design-Builder acknowledges and agrees that the award of the Contract by Department to Design-Builder was based, in large part, on the qualifications and experience of the personnel listed in the Statement of Qualifications, the Proposal and Design-Builder's commitment that such individuals would be available to undertake and perform the Work. Design-Builder represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in the Proposal in connection with the Work. Unless otherwise agreed to by Department in writing, individuals filling key personnel roles shall devote a sufficient amount of their time for the applicable role with respect to the prosecution and performance of the Work and Design-Builder shall document such commitment to Department's satisfaction upon Department's request.

7.4.3 Employee Performance Requirements

All individuals performing the Work shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If Department determines in its sole discretion that any Person employed by Design-Builder or by any Subcontractor is not performing the Work properly and skillfully, or who is intemperate or disorderly, then, at the written request of Department, Design-Builder or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior Approval of Department in its sole discretion. If Design-Builder or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then Department may, in its sole discretion, suspend the affected portion of the Work by delivery of written notice of such suspension to Design-Builder. Such suspension shall in no way relieve Design-Builder of any obligation contained in the Contract Documents or entitle Design-Builder to a Change Order. Once compliance is achieved, Design-Builder shall be entitled to and shall promptly resume the Work.

Surveys performed to progress the construction activities on the Project are covered by the Contract labor requirements. The workers performing the Work shall be paid at a minimum wage based on the most similar trade or occupation as set forth in <u>Exhibit F.</u>

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS FOR DESIGN-BUILD PROJECTS

TABLE OF CONTENTS

A. POLICY STATEMENT	E-2
B. CONTRACT ASSURANCE	E-2
C. DBE GOAL	E-2
D. DBE PERFORMANCE PLAN	E-3
E. SUBMITTAL OF DOCUMENTATION	E-4
F. GOOD FAITH EFFORTS DETERMINATION	E-5
G. COUNTING DBE PARTICIPATION	E-6
H. CONTINUING GOOD FAITH EFFORTS	E-7
I. APPLICABILITY TO DBE BIDDERS/PROPOSERS	E-8
J. DBE CONTRACTS	
K. TERMINATION OF DBE CONTRACTS	E-8
L. BIDDER'S LIST	E-8
M. EFFECT OF SUPPLEMENTAL AGREEMENTS	E-9
N. PROMPT PAYMENT	E-9
O. CONSEQUENCES OF NON-COMPLIANCE	E-9
P. SANCTIONS	
Q. DBE LIQUIDATED DAMAGES	E-10
R. REPORTING	E-10

ATTACHMENTS

Good Faith Efforts Documentation – Form E-1	12	2
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DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS FOR DESIGN-BUILD PROJECTS <u>A. POLICY STATEMENT</u>

It is the policy of Department to encourage the participation of DBE, women-owned business enterprises and minority business enterprises in all facets of its business activities, consistent with applicable laws and regulations. Pursuant to the provisions of 49 CFR Part 26, Department has adopted rules to provide certified DBEs opportunities to participate in the business activities of Department as service providers, vendors, contractors, subcontractors, advisors, and consultants. Proposers are advised that, as required by federal law, Department is implementing new DBE requirements for Disadvantaged Business Enterprises ("DBE"). To ensure there is equal participation of the DBE groups specified in 49 CFR Section 26.5, Department specifies a goal for DBEs, which are firms that meets the definition of DBE and are a member of one of the following groups:

- 1. Black Americans;
- 2. Native Americans;
- 3. Asian-Pacific Americans; or
- 4. Women

The DBE goal applies to all of Department's contracts and purchases paid with funds received from the U.S. Department of Transportation through FHWA, the Federal Transit Administration, and the Federal Aviation Administration. Because Department has programmed federally-sourced funds for the Project, the DBE goal will apply to the Project and Design-Builder is obligated to comply with applicable federal laws and regulations related to DBEs.

The Design-Builder and its Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers will take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform on this contract.

B. CONTRACT ASSURANCE

The Design-Builder, and its Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Design-Builder shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of federally funded contracts. Failure by the Design-Builder 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 Department deems appropriate.

C. DBE GOAL

The DBE goal established for this contract is as shown on the DBE Certification (Form 17).

The Design-Builder shall establish individual contract goals for each Contract, Subcontract, and each Consultant, Subconsultant and Supply and Service Provider Agreement in amounts to ensure the contract goal is met. Department will monitor the Design-Builder's activities to ensure they are conducted in a manner consistent with the requirements of 49 CFR Part 26.

Only DBE participation will count towards the DBE goal. DBE participation will count towards the Department's federally mandated statewide overall DBE goal.

Credit for materials or supplies purchased from DBEs counts towards the goal in the following manner:

- 1. 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 2. 60 percent counts 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 count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

Credit towards the goal will be received if employing a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1)-(4), (6).

D. DBE PERFORMANCE PLAN

Design-Builder shall prepare a Disadvantaged Business Enterprise/Underutilized Disadvantaged Business Enterprise Performance Plan ("DBE Performance Plan") that complies with all applicable Laws and Governmental Approvals, is consistent with the Contract Documents, and includes the following elements:

1) A policy statement, signed by Design-Builder's Authorized Representative, which expresses Design-Builder's commitment to utilize DBEs in all aspects of the Work, outlines the various levels of responsibility, and states the objectives of the DBE Performance Plan. Design-Builder shall obtain the written commitment of all Design-Builder related entities to comply with and advance the intent of the policy statement;

2) Design-Builder's designation of a person responsible for the DBE Performance Plan (the "Liaison Officer"), as well as support staff necessary and proper to administer the program and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff are responsible for developing, managing, and implementing the DBE Performance Plan on a day-to-day basis, for providing technical assistance to DBEs, and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to engage in Work as Subcontractors or Subconsultants. The Liaison Officer shall work in close coordination with the Department, and shall report quarterly on Design-Builder's success in attaining the established DBE participation goals during the Design Work and the Construction Period; and

3) A description of proposed actions to facilitate DBE engagement in Work as Subcontractors and Subconsultants, such as:

a) On-going quarterly strategic planning sessions with the Department to establish goals for specific bid item groups by reviewing the work, available firms, strategies, anticipated obstacles and means to overcome obstacles;

b) Conduct bid-item specific outreach meetings in coordination with the Department for DBE firms to highlight current and upcoming appropriate subcontracting opportunities;

c) Solicit statements of qualification, proposals, and/or price quotations from qualified DBE firms and arrange a time for the review of qualifications, plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of proposals and/or price quotations;

d) Provide assistance, in coordination with the Department, to DBEs so that these may overcome barriers such as the inability to obtain bonding, insurance, financing, or technical assistance;

e) Develop and conduct information and communication programs or workshops, in coordination with the Department, on contracting procedures and specific contracting opportunities in a timely manner;

f) Encourage eligible DBEs to apply for certification with the Department; and

g) Contact local/regional Disadvantaged, Underutilized, Trade-Specific Contractor Associations and appropriate city agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible DBE contractors to apply for certification with the Department.

E. SUBMITTAL OF DOCUMENTATION

With the submission of the initial Proposal and for all subcontracts subsequently awarded where goals are set, regardless of contract size, the Design-Builder, Subcontractor, Consultant, Subconsultant, Supplier and Service Provider will be required to: (a) propose the participation of specific DBEs to meet the goal; or (b) demonstrate good faith efforts to meet the goal. A Design-Builder, Subcontractor, Consultant, Subconsultant, Supplier and Service Provider must provide justification if it rejects bids, quotes, or proposals from properly certified, qualified DBE firms.

In order to fulfill a DBE goal, the firms utilized as DBE Subcontractors, Consultants, Subconsultants, Suppliers or Service Providers must be certified as DBEs by the California Unified Certification Program prior to the release of the RFP, and/or subsequent to the award of the Contract, the advertisement of bids or the selection of any new Subcontractors, Consultants, Subconsultants, Suppliers or Service Providers during the project. For a list of DBEs certified by the California Unified Certification Program, go to:

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

The Design-Builder <u>must</u> submit the following documents to the Department. These documents must be submitted with the initial Proposal.

- 1. Design-Builder's Good Faith Efforts Documentation
- 2. Design-Build Bidders List
- 3. Supporting Documentation to Verify Good Faith Efforts Including, but not limited to a copy of the signed agreements with each DBE to be utilized by the Design-Builder, Contractor, Subcontractor, Consultant, Subconsultant, Supplier or Service Provider.
- 4. DBE Goal Certification Form (Form 17).

The completed **Design-Build Bidders List** should include information on: (1) all DBE and non-DBE firms that submitted a bid/proposal for the project; (2) the proposed firms to be used on the project as contractors/subcontractors/ consultants/Subconsultants/suppliers/service providers; (3) a description of the work; (4) bid dollar amount; (5) years the company has been in business; and (6) the firm's average annual gross receipts for the past three years. The Design-Builder must submit a Design-Build Bidder's List regardless of whether or not it has indicated sufficient DBE participation to meet the DBE goal.

The Design-Builder must also submit **additional information**, which supports its Good Faith Efforts such as those typical Good Faith Efforts listed in DBE Special Provisions for Design-Build Projects as well as summaries of the contractor's discussions and/or solicitation efforts of DBE firms (along with the firm names, addresses and contact persons). This information can include but is not limited to copies of solicitation letters and/or faxes to DBE firms.

The Design Builder's Subcontractors, Consultants, Subconsultants, Suppliers and Services Providers, including DBE and non-DBE firms, that subcontract part of their work or purchase supplies from other firms are also required to demonstrate that they made Good Faith Efforts to provide opportunities for DBE firms to participate on this Design-Build project.

F. GOOD FAITH EFFORTS DETERMINATION

Department will determine whether a Design-Builder made sufficient good faith efforts to meet the goal, in accordance with 49 C.F.R. §26.53 and Appendix A thereto. The Design-Builder must show that it took all necessary and reasonable steps to achieve the DBE goal or other requirement of 49 C.F.R. Part 26, which, by its scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if it were not fully successful. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. Compliance will be determined on a case-by-case, based on a review of documentation of the following types of activities:

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

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

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

(d) Negotiating in good faith with interested DBEs. The Design-Builder has the responsibility to make a portion of the work available to DBE Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers, to select those portions of the work or material needs consistent with the available DBE Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of the DBEs that were considered; a description of information provided regarding the plans and specifications for the work selected for contracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work;

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

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

(g) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by Department or Design-Builder,

(h) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services; and

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

G. COUNTING DBE PARTICIPATION

In accordance with 49 C.F.R. §26.55, Department will utilize the following guidelines in determining the percentage of DBE participation that will be counted toward the overall DBE goal:

1. If a firm is not currently certified as a DBE, in accordance with the standards of Subpart D of the regulations (49 C.F.R. §26.55(f)), at the time of the due date for the Proposals, the firm's participation toward any DBE goals will not be counted, except as provided for in 49 C.F.R. §26.87(i);

2. The dollar value of the work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal;

3. The participation of a DBE Subcontractor/Consultant/Subconsultant/ Supplier/Service Provider toward the Design-Builder's DBE achievements or the overall goal will not be counted until the amount being counted toward the goal has been paid to the DBE;

4. When a DBE participates in the Contract, the value of the work actually performed will be counted as follows:

(a) The entire amount of the portion of a construction contract (or other contract not covered by paragraph 49 C.F.R. §26.55 that is performed by the DBE's own forces). Include the cost of supplies and materials obtained by the DBE for the work of the Contract, including supplies purchased or

equipment leased by the DBE (except that supplies, and equipment the DBE Contractor/Subcontractor purchases or leases from the Design-Builder or its affiliate(s) will not be counted);

(b) The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, count toward DBE goals, provided that the Department determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services;

(c) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's Subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward the DBE goal;

(d) When a DBE performs as a participant in an approved joint venture, Department will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals; and

5. Department will count expenditures of a DBE Subcontractor, Consultant, Subconsultant, Supplier or Service Provider toward DBE goals only if the DBE is performing a commercially useful function on that contract in accordance with 49 C.F.R. §26.55.

H. CONTINUING GOOD FAITH EFFORTS

During the term of the Contract, the Design-Builder will make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform on the Contract, and that the Design-Builder meets its DBE goal. These efforts shall include but not be limited to the following:

(a) Negotiating in good faith to attempt to finalize a Subcontract/ Consultant/ Subconsultant / Supply/ Service Provider agreement with DBEs committed to prior to Contract award;

(b) Continuing to provide assistance to DBE Subcontractors/ Consultant/ Subconsultant / Suppliers/ Service Providers in obtaining bonding, lines of credit, etc., if required by the contract;

(c) Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting Department's statement of no objection to substitute the DBE;

(d) As with all Subcontractors/ Consultants/ Subconsultants/ Suppliers/ Service Providers, timely payment of all monies due and owing to DBE Subcontractors/ Consultants/ Subconsultants/ Suppliers/ Service Providers;

(f) Timely submittal of "Good Faith Efforts" information and documentation to Department throughout the contract, as contracts are let and new vendors, subcontractors, Subconsultants, suppliers and service providers are selected;

(g) Informing Department in a timely manner of any problems anticipated in attaining the DBE participation goal committed to in the Proposal; and

(h) If the Design-Builder or any of its Contractors/ Subcontractors/ Consultants/ Subconsultants/ Suppliers/ Service Providers requests a substitution of a DBE firm, the Design-Builder or its Contractors/ Subcontractors/ Consultants/ Subconsultants/ Suppliers/ Service Providers must exert good faith efforts to replace the DBE firm with another DBE firm, subject to Department's statement of no objection.

I. APPLICABILITY TO DBE BIDDERS/PROPOSERS

These good faith efforts requirements also apply to DBE Bidders/Proposers for Contracts. The work proposed to be performed with its own work force as well as work committed to DBE Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers will count toward the contract-specific goal.

J. DBE CONTRACTS

Whenever a DBE (including DBEs) is selected as a Subcontractor/ Consultant/ Subconsultant/ Supplier/ Service Provider and it has not been previously reported, the Design-Builder or designated Liaison Officer shall promptly provide the Department with the following information regarding the subcontract:

(a) The name of the Subcontractor/ Consultant/ Subconsultant/ Supplier/ Service Provider;

(b) The total dollar amount of the contract, subcontract, consultant, Subconsultant or supply/ service provider agreement;

(c) The specific work items covered by the subcontract or the consultant/ Subconsultant supply/ service provider agreement;

(d) Estimated quantities of each work item; and

(e) Individual unit prices (if applicable).

K. TERMINATION OF DBE CONTRACTS

Department requires that the Design-Builder, and its Contractors, Subcontractors, Suppliers and Service Providers not terminate for convenience a DBE Subcontractor/Consultant/Sub-Consultant/Supplier/Service Provider listed on the List of Proposed DBEs (or an approved substitute DBE) and then perform the Work of the terminated Contract with its own forces or those of an affiliate, without prior written consent of the Department. The request for removal must be made in writing to the Department.

If a DBE Subcontractor/Consultant/Sub-Consultant/Supplier/Service Provider is terminated or fails to complete its work on a contract for any reason, the Design-Builder must make good faith efforts to find another DBE Subcontractor/Consultant/Sub-Consultant/Supplier/Service to substitute for the original DBE. These good faith efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract-specified goal.

L. BIDDER'S LIST

A Design-Builder Bidder's List must be submitted with the Proposal on the Price Proposal Due Date, and the successful Design-Builder must maintain a Bidder's List throughout the life of the Project. The Bidder's List must be created and maintained in accordance with 49 C.F.R §26.11(C), and identify all firms quoting or bidding on subcontracts and consultant/Subconsultant or supply/service provider agreements for this Design-Build Contract. For every firm quoting or bidding on subcontracts, and consultant/Subconsultant or supply/service provider agreements for this Design-Build Contract, the following must be obtained:

- (a) The firm's name;
- (b) The firm's address;
- (c) The firm's status as a DBE or non-DBE;
- (d) The age of the firm; and
- (e) The annual gross receipts of the firm.

M. EFFECT OF SUPPLEMENTAL AGREEMENTS

The dollar amount of any Supplemental Agreement or any other contract modification that increases the dollar amounts of the contract or any subcontract or Subconsultant agreement will be subject to the DBE goal established for this project, and the Contractor and its subcontractors and Subconsultants will be required to solicit DBE participation for such increases. Revised total contract dollar values shall be reflected in the Contractor Payment and Subcontract Award Monthly Progress Reports submitted to Department.

N. PROMPT PAYMENT

The Design-Builder agrees to pay each Subcontractor, Consultant, Subconsultant, Supplier or Service Provider under this Design-Build Contract within ten (10) days of the Design-Builder's receipt of payment from the Department for undisputed services provided by the Subcontractor, Subconsultant, Supplier or Service Provider. The Design-Builder must pay interest of 1-1/2 percent per month or any part of a month to the Subcontractor, Consultant, Subconsultant, Supplier or Service Provider on any undisputed amount not paid on time to the Subcontractor, Consultant, Subconsultant, Subconsultant, Supplier or Service Provider. This clause applies to both DBE and non-DBE firms working on this Contract.

O. CONSEQUENCES OF NON-COMPLIANCE

(1). BREACH OF CONTRACT - Failure to carry out the DBE requirements specified in the Contract Documents constitutes a breach of contract. Department will notify the Design-Builder and the USDOT of such breach, including notification that the breach may result in termination of the Contract by Department or imposition of other appropriate sanctions. This notice is given pursuant to 49 C.F.R. Part 26. For purposes of this section, timely submittal means received by Department by the close of business on the tenth (10th) of the following month.

(2) NOTICE - If the Design-Builder or any Subcontractor, Consultant, Subconsultant, Supplier or Service Provider is deemed to be in non-compliance, the Design-Builder will be informed in writing, by certified mail by Department that sanctions will be imposed for failure to meet DBE utilization goals and/or submit documentation of good faith efforts. The notice will state the specific sanction to be imposed.

P. SANCTIONS

If it is determined that the Design-Builder's failure to meet all or part of the DBE goal is due to the Design-Builder's inadequate good faith efforts throughout the life of the contract, including failure to submit required good faith efforts information and documentation, the Design-Builder may be subject to Contract termination.

Q. DBE LIQUIDATED DAMAGES

As defined in 49 C.F.R. Part 26, if it is determined that the Design-Builder's failure to meet all or part of the DBE goal is due to the Design-Builder's inadequate Good Faith Efforts, the Design-Builder may be required to pay DBE Liquidated Damages equal to the amount of the unmet goal.

<u>R. REPORTING</u>

(a) <u>DBE RECORDS</u> - The Design-Builder shall maintain records and shall require its Subcontractors/Consultants/Subconsultants/Suppliers/Service Providers that are utilizing DBE (including DBE) firms in such contracts to maintain records to verify DBE participation as set forth in the Proposal and as modified during the course of the Contract. Such records shall show name and business address of each DBE participating in the Contract, Subcontract and Consultant/Subconsultant or Supply/Service Provider Agreement and the total dollar amount actually paid to each DBE and the date of payment.

(b) <u>REPORTING REQUIREMENTS AND DEPARTMENT REVIEW</u> - The Design-Builder will submit ongoing progress reports to Department on its payments to all its Contractors/ Subcontractors/ Suppliers/ Service Providers, regardless of their tier or DBE status, within ten (10) days after receiving payment from Department until final payment is made. The Design-Builder shall submit these progress reports on its payments to Contractors/ Subcontractors/ Consultants/ Subconsultants/ Suppliers/ Service Providers on the attached Contractor Payment Form. The Design-Builder shall submit a copy of each Contractor Payment Reports to the Department.

A Summary of Contracts, Subcontracts, Consultant/ Subconsultant and Supply/ Service Provider Agreements Awarded shall be submitted to Department on a monthly basis, which should include the firm name, address, phone number, contact person, amount of the contract, subcontract, consultant/ Subconsultant or supply/ service provider agreement, description of work and length of the contract, subcontract, consultant/ Subconsultant or supply/service provider agreement.

Department will review the Summary of Contracts, Subcontracts, Consultant/ Subconsultant and Supply/ Service Provider Agreements Awarded Monthly Progress Report to monitor and determine whether the utilization of DBE firms is consistent with the commitment of the Design-Builder, as stated in its Proposal.

If it is determined that the Design-Builder's DBE utilization during performance of the Contract is not consistent with the commitment thereto, the Design-Builder will be requested, in writing, to submit evidence of its good faith efforts to meet the goal. The Design-Builder shall be given ten (10) working days to submit this documentation. Failure to respond shall place the Design-Builder in Non-Compliance, subject to sanctions as provided in this contract herein.

(c) <u>SUMMARY OF SUBCONTRACTS AWARDED AND PAID REPORT</u> - As indicated above in the sections on "Reporting Requirements and Department Review" and "Prompt Payment," the Design-Builder is required to submit: (a) a Summary of Subcontracts Awarded on a monthly basis; by no later ten (10) days after receiving payment from Department.

Department reserves the right to withhold progress payment until the required reports have been furnished.

(d) <u>QUARTERLY REVIEW/DBE WORK AND PAYMENT SCHEDULE</u> - A review of the Design-Builder's compliance with the DBE participation goal will be conducted on a quarterly basis as follows:

Not later than thirty (30) days following the Notice to Proceed 1, the Design-Builder shall submit a "DBE Work and Payment Schedule" to the Department, which shall indicate for the entire Contract period a listing on a per month basis, of the DBE firms which the Design-Builder expects to utilize, the amount of payments expected to be made to DBEs, and the percentage of each DBE firm's contract that will be completed on each month. The "DBE Work and Payment Schedule" shall be updated every sixty (60) days consistent with the updates to the Baseline Schedule.

During the sixty (60) days following Design-Builder's submittal of the "DBE Work and Payment Schedule", Department will review the Contractor Payment Reports to determine if the Design-Builder is meeting the "DBE Work and Payment Schedule". If the Design-Builder has not met the "DBE Work and Payment Schedule," Department will notify the Design-Builder of the need for correction of DBE participation levels to meet the "DBE Work and Payment Schedule" by the next quarter.

Sixty days (60) following such notice, Department will evaluate whether the Design-Builder has corrected DBE participation deficiencies to meet the "DBE Work and Payment Schedule". If such deficiencies are not corrected and the level of DBE participation remains below that provided in the "DBE Work and Payment Schedule", and the Design-Builder is unable to show it made good faith efforts to do so, Department may impose liquidated damages in accordance with the Contract herein.

(e) <u>DBE FINAL REPORT</u> - A DBE Final Report shall be submitted with the Request for Final Payment. The DBE Final Report shall consist of:

(1) A Report listing all Contractors, Subcontractors, Consultants, Subconsultants, Suppliers and Service Providers and DBE activity (work performed) on the Design-Build Contract; and

(2) A Summary of Good Faith Efforts, covering the entire Design-Build Contract period if the DBE goal has not been met for the Contract.

The Department shall evaluate the Contractor's Final Report and make a determination as to whether the Contractor made Good Faith Efforts to meet the DBE goal. The Department shall issue a Final Report with its determination on the Contractor's Good Faith Efforts no later than 60 days following the Contractor's submission of its Final Report.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION GOOD FAITH EFFORTS DOCUMENTATION

DES-OE-0102.11 (NEW 2/2009)

A. List items of work the bidder made available to UDBE firms. Identify those items of work the bidder might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate UDBE participation. For each item listed, show the dollar value and percentage of the total contract. It is the bidder's responsibility to demonstrate that sufficient work to meet the goal was made available to UDBE firms.

Item of Work Offered	Bidder Normally Performs Item (Y/N)		Item Broken Down to Facilitate Participation (Y/N)		Amount (\$)	Percentage of Contract
	Yes Yes	N₀	Yes Yes	No No		
	Yes	No	Yes	No No		
	Yes	No	Yes	No No		
	Yes	No	Ves Ves	No No		
	Yes	No	Yes	No No		
	Yes	No	☐ Yes	□ No		
	Yes	No	Yes	No No		
	Yes	N₀	Yes Yes	No No		
	Ves	No	Yes	No No		
	Yes	No	Yes	No No		
	Yes	No	Yes	No No		
	Yes	No	Yes	No No		
	C. Yes	No	☐ Yes	□ No		
	Yes	No	Yes	No No		
	Yes	No	Yes	No No		
	Yes	No	Yes	No No		
	Yes	No	Yes	No No		
	Yes	No	Yes	No No		
	Yes	No	Yes	No No		
	Yes	□ No	Yes	No No		

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION GOOD FAITH EFFORTS DOCUMENTATION

DES-OE-0102.11 (NEW 2/2009)

B. List the names of certified UDBEs and the dates on which they were solicited to bid on this project. Include the items of work offered and the dates and methods used for following up initial solicitations to determine with certainty whether the UDBEs were interested. Attach copies of solicitations, telephone records, fax confirmations, etc.

Name of UDBEs Solicited	Date of Initial Solicitation	Item(s) of Work	Follow Up Methods and Dates

C. For each item of work made available, list the selected firm and its status as a UDBE, the UDBEs that provided quotes, the price quote for each firm, and the price difference for each UDBE if the selected firm is not a UDBE.

Item(s) of Work	Name of Selected Firm	UDBE or non- UDBE	Name of Rejected Firm	Quote (\$)	Price Difference (\$)
	s not a UDBE, provide the reason				

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION **GOOD FAITH EFFORTS DOCUMENTATION**

DES-OE-0102.11 (NEW 2/2009)

D. List the names and dates of each publication in which a request for UDBE participation for this project was placed by the bidder. Attach copies of published advertisements or proofs of publication:

Publications Dates of Advertisement

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

Name of Agency	Date of Contact	Method of Contact	Results

F. List efforts made to provide interested UDBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. Identify the UDBE assisted, the information provided, and the date of contact. Provide copies of supporting documents

G. List efforts made to assist interested UDBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the UDBE subcontractor purchases or leases from the prime contractor or its affiliate. Identify the UDBE assisted, the assistance offered, and the date. Provide copies of supporting documents.

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

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

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.

California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT G

Division of Procurement and Contracts (Non-Architectural and Engineering Contracts): Boiler Plate section

Contract Goals 26.51(d-g)

Contract Manager Handbook:

2.6.5 DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) GOALS/SMALL BUSINESS (SB) GOALS/DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Certain businesses are eligible to be certified as a DVBE and a SB. Firms interested in certification as a DVBE or SB should contact the DGS Procurement Division.

The State of California currently has a goal to contract at least 25 percent of contract dollars with "certified" SB and three percent with DVBE firms.

Caltrans also strives to increase the level of participation of disadvantaged businesses in all federal contracting activities. The overall statewide annual Department DBE goal is currently 12.5 percent. Pursuant to federal regulations, to participate in our program qualifying firms must first be certified as a DBE by the Office of Business and Economic Opportunity (OBEO).

Contract Managers have primary responsibility for setting DVBE Goals and achieving DBE participation. The OBEO may assist Contract Managers in that effort. Non- competitively bid contracts and non-public agency contracts also are subject to the same goals. When setting goals, Contract Managers should evaluate:

- 1. the type of work to be performed;
- 2. items of work to be provided (materials, equipment, supplies, or services); and
- 3. availability of subcontractors in the area where the work will be performed (OBEO generally recognizes a minimum of three (3) certified firms within 100 miles of the project to indicate sufficient subcontractor capability).

Subcontractors must provide or perform a separate and distinct element of work that will be used during the term of the contract to fulfill the contract requirements.

Names of DVBE or DBE firms can be obtained in one of the following ways:

- 1. Names of certified DVBE firms can be obtained from the Cal eProcure website: <u>https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx</u>
- 2. Access the OBEO website to find a certified DBE firm:

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

Contract Managers requesting contracts be processed with no goals or percentages must place an "X" in the "No Goals" box on ADM-0360 and **attach written justification approved by OBEO prior to the submittal of ADM-0360 to DPAC**. The justification for "No Goals" must contain a signature block for OBEO and, if the estimated cost of the work is more than \$100,000, the signature of the HQ Division Chief or Deputy District Director is required on the justification. A list of potential certified firms that could perform as prime Contractors must be attached to the justification request submitted to OBEO. Refer to the ADM-0360 instructions.

If contracts are funded by state or state/local funds, Contract Managers set goals for DVBE subcontractor participation. If contracts are wholly or partially funded with federal funds, Contract Managers set percentages for DBE subcontractor participation. Goals may be set at less than or greater than (even up to 100 percent) the annual goal established by Caltrans for a specific solicitation, project, or contract.

Currently there is no race-conscious DBE program, which set specific DBE contract participation goals that prime Contractors had to meet or demonstrate Good Faith Efforts (GFE), to the satisfaction of Caltrans, in order to be awarded contracts as responsive and responsible bidders. However, we still have an obligation to the DBE community and mandate from the Federal Highway Administration (FHWA) to try to meet the overall statewide DBE goal of 12.5 percent for federally funded contracts.

A. Setting the DBE Participation Percentage

DPAC partners with Contract Managers in identifying whether or not DBE Participation is applicable by applying the following criteria:

- 1. Type of work to be performed;
- 2. Dollar value of the contract;
- 3. Subcontractable items available;
- 4. Comparison to similar contracts with a DBE participation; and
- 5. Availability of DBEs in the area where the work will be performed.

Contract Managers are strongly encouraged to set DBE Participation Percentages on contracts that have DBE subcontracting opportunities by applying the same criteria Contract Managers formerly used to set DBE goals.

If a participation percentage is not established, a no goal justification approved by OBEO is not required.

GFE – All Contracts/Subcontracts must comply

26.53(j)

A&E and Non-A&E Contract Boilerplate Language

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. 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).

Trucking

26.55(d)

A&E and Non-A&E Contract Boilerplate Language

UCredit 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 owneroperator 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 owneroperator. 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.

Firm Ceased to be certified

26.55(g)

A&E and Non-A&E Boilerplate Language

4 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 the Caltrans Contract Manager within thirty (30) days.

Counting Credit

26.55(h)

A&E and Non-A&E Contract Boilerplate Language

4 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
- C. 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.
- D. 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.

- E. 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 owneroperator 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 owneroperator. 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.

Prompt payment

26.29(a)

Non-A&E Contract Boilerplate Language

Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

A&E Contract Boilerplate Language

Budget Details and Payments Provisions

The Consultant will be reimbursed in arrears for services satisfactorily rendered and approved by the Caltrans Contract Manager, as promptly as fiscal procedures will permit upon receipt by the Caltrans Contract Manager of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order.

Monitoring and Enforcement

26.29(d-e)

Mon-A&E Contract Boilerplate Language

BUDGET DETAIL AND PAYMENT PROVISIONS

Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

Invoicing and Payment

- A. For services satisfactorily rendered and approved by Caltrans Contract Manager, and upon receipt and approval of the invoices, Caltrans agrees to compensate the Contractor in accordance with the Bid Proposal, Attachment 1 and this Exhibit B. Incomplete or disputed invoices shall be returned to the Contractor, unpaid, for correction.
- B. In compliance with the recent passage of the revised regulation (Title 49 CFR 26.37), the Disadvantaged Business Enterprises Utilization Report form (ADM3069) is required, as specified, in this agreement.
 - 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.

4 <u>A&E Contract Boilerplate Language</u>

SCOPE OF WORK AD DELIVERABLES

At the Caltrans Contract Manager's direction, the Caltrans Task Order Manager shall assist the Caltrans Contract Manager in the monitoring and verification of the Consultant's performance and deliverables. The Caltrans Contract Manager shall have the ultimate responsibility and authority to verify the Consultant's performance, cost, schedule, and deliverables, and verification that the acceptance and performance criteria and/or performance tests are satisfied. The Caltrans Contract Manager shall verify that the acceptance and performance criteria and/or performance tests are satisfied. The Caltrans Contract Manager shall verify that the acceptance and performance criteria and/or performance tests are satisfied prior to written acceptance for payment.

4 <u>DPAC Contract Manager's Handbook</u>

4.3.4 TIMELY INVOICE PROCESSING AND INVOICE DISPUTES

Date-stamp all invoices upon receipt. Begin the review and payment process immediately. In accordance with the Prompt Payment Act, the State has 45 calendar days to issue payment on undisputed invoices received – 15 calendar days for the Contract Manager to process and approve; 15 calendar days for DofA to audit and process; and 15 calendar days for the State Controller's Office (SCO), in turn, to issue the payment warrant. Failure to meet either of these requirements will result in interest being assessed (as a late payment penalty). If interest were assessed due to Caltrans' failure to submit the invoice to SCO, the appropriate interest would be charged to the Departmental division responsible for the delay of payment.

Invoices from certified SBs, Micro Businesses, and DVBEs are handled essentially the same as other invoices. However, if a Contractor is currently certified with the Department of General Services (DGS) Office of Small Business and DVBE Services (OSDS), the State shall pay to the Contractor a late payment penalty of 0.25 percent of the amount due, per calendar day, from the required payment date. Caltrans does have, however, the same 15 calendar day timeframe to dispute invoices. Contract Managers shall promptly respond to all subcontractor or supplier inquiries regarding the status of payments made to prime contractors.

If Contractors offer discounts for prompt payment of invoices, Contract Managers should make concerted efforts to take advantage of the discounts.

If a Contract Manager disputes any portion of the invoice and decides to withhold payment on that part of the invoice (for example, the work performed was not satisfactory or not performed at all), the Contract Manager must notify the Contractor in writing about the item(s) in dispute, the monetary amount of the dispute, and what actions, if any, are required to resolve the dispute. Payment to Contractors should not be authorized if work has not been completed to a Contract Manager's satisfaction.

The Contract Manager cannot withhold the entire invoice amount, but only the amount for items being disputed. Use Invoice Dispute Notification (STD. 209) as notices of invoice disputes.

Timely filing of Invoice Dispute Notification (STD. 209), will "stop the clock" on processing invoices when there are disputes. An invoice dispute effectively interrupts the required payment date for prompt payment. Vendors must be notified of an invoice dispute within 15 working days of invoice receipt or delivery of the goods or services, whichever is later. Failure to notify Contractors, in writing, of invoice disputes within the required time frame will cause invoices to be handled as undisputed invoices and thus may cause the State to be assessed interest for any charges not automatically paid within the required 45 calendar days.

The Contract Manager shall approve invoices, if all information is correct and accounted for, by signing, dating, and writing "approved for payment", and contract number on all three invoice copies. Upon approval, Contract Managers prepare and send two invoice packages to DofA: one for processing to the SCO, who issue payment warrants to Contractor; and one for DofA's records (Contract Managers keep the third one in their contract files).

Invoice packages must include the following information:

- Receiving records (FA1226A) completed with all requested information, including proper cost and charge coding information (source district, source unit, charge district, object code, expenditure authorization (EA), and funding FY), and legible name and phone number information for DofA to use if needed (or all of the above information may be recorded on a blank portion of the invoice); Invoices with original signatures of Contract Manager and Contractor. If the dollar amount being approved differs from the invoiced amount, Contract Manager should indicate on the invoice the changes. A notation, such as "Approval as indicated", should be written above Contract Manager's signatures; and
- Copies of written notices to Contractor if invoices are not being paid in full as submitted.

Forward invoice packages, including all applicable documentation, to DoA – Office of Accounts Payable. Consult the CAL-Card Handbook if paying invoices by CAL-Card.

Monitoring and Enforcement

26.37(b)

4 <u>Non A&E Contract Boilerplate Language</u>

Invoicing and Payment

In compliance with the recent passage of the revised regulation (Title 49 CFR 26.37), the Disadvantaged Business Enterprises Utilization Report form (ADM3069) 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.

4 <u>A&E Contract Boilerplate Language</u>

Budget Detail and Payment Provisions

In compliance with 49 CFR 26.37, revised on February 28, 2011, a Disadvantaged Business Enterprises Utilization Report (form ADM3069) is required, as specified in this Agreement.

1. The Consultant shall submit a Disadvantaged Business Enterprises Utilization Report (form ADM-3069), Attachment 5, with each invoice. Also refer to Exhibit D, Special Terms and Conditions.

2. Failure to provide the Disadvantaged Business Enterprises Utilization Report (form 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 the Consultant when a satisfactory Disadvantaged Business Enterprises Utilization Report (form ADM-3069) is submitted to the Caltrans Contract Manager.

<u>IPAC Contract Manager Handbook</u>

4.1 OVERVIEW

The Contract Manager is an authorized representative of the State of California and responsible for the administration of contracts and monitoring/documenting Contractors' performance. The requesting unit designates a Contract Manager who will manage and monitor the contract.

Contract Managers:

- Perform administrative tasks ranging from requesting contract services to authorizing final payment for satisfactorily completed services to maintaining contract documentation.
- Make timely requests for contract amendments or renewals, if necessary.

- Play a critical role in defining, monitoring, and evaluating the performance of Contractors from commencement of work to completion of the evaluation.
- Are authorized Departmental representatives when dealing with Contractors.
- Act as liaisons with Contractors.
- Decide whether or not the State is getting fair value for taxpayers' money paid for Contractors' services.

Good Faith Efforts (GFE)

26.53(a)(b)

Non A&E Solicitation Language:

Proposer shall complete and submit **Attachment** _____, <u>Bidder/Proposer Disadvantaged Business</u> <u>Enterprise (DBE) Good Faith Efforts Documentation</u> for detailed information and the required forms. Required forms will be made a part of the Agreement. Failure to meet the DBE goal or Good Faith Effort requirements and provide required DBE participation will result in the bid being rejected as non-responsive.

Attachment

For Use in Contracts with Federal dollars. Delete if not applicable

Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation ADM-0312F

A&E Boilerplate Language:

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 Department of Transportation 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 Consultant will still be required to submit a Disadvantaged Business Enterprises Utilization Report (form 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. Consultant 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 in 49 CFR 26, for this assurance. Consultant 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. In order to ascertain whether or not the overall annual DBE goal is achieved, Caltrans tracks DBE participation on all federal-aid contracts. The Disadvantaged Business Enterprise (DBE) Information form (ADM 0227F A&E) is attached as Attachment _____ and incorporated as part of this Agreement.

- E. Consultant shall notify the 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.
- F. Any subcontract entered into between the Consultant and Subconsultant(s) as a result of this Agreement shall contain all of the provisions of this section.

Termination, Substitution of DBEs after contract award

26.53(f)

Non-A&E Contract Boilerplate Language

H 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.
- 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.

4 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.
- 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.

A&E Contract Boilerplate Language:

H Termination of DBE

A. In conformance with 49 CFR 26.53 (f) (1) and 26.53 (f) (2):

- 1. Consultant shall not terminate for convenience a listed DBE Subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless Consultant has received prior written authorization from the Caltrans Contract Manager to perform the work with other forces (other than Consultant's own personnel) or to obtain materials from other sources;
- 2. If a DBE Subconsultant is terminated or fails to complete its work for any reason, Consultant will be required to make GFE to replace the original DBE Subconsultant with another DBE Subconsultant to the extent needed to meet the Agreement goal.

B. Noncompliance by Consultant 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.

4 DBE Substitutions

- A. Consultant may not substitute a listed DBE Subconsultant, supplier or, if applicable, a trucking company, without the prior written approval of the Caltrans Contract Manager. Failure to obtain approval of substitute Subconsultants before work is performed, supplies are delivered, or services are rendered may result in payment being denied by Caltrans.
- B. Consultant must make an adequate good faith effort (GFE) to find another certified DBE Subconsultant to substitute for the original DBE Subconsultant. GFE shall be directed at finding another DBE Subconsultant to perform at least the same amount of work under

the Agreement as the DBE Subconsultant that was substituted or terminated to the extent needed to meet the contract goal for DBE participation established for the Agreement.

- C. The requirement that DBEs must be certified by the Statement of Qualification due 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.
- D. Consultants shall submit requests for substitution to the Caltrans Contract Manager. Authorization to use other Subconsultants or suppliers may be requested for the following reasons:
 - 1. Listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written Agreement, when such written Agreement, based upon the terms and conditions for this Agreement or on the terms of such Subconsultant's or supplier's written proposal, is presented by Consultant.
 - 2. Listed DBE becomes bankrupt or insolvent.
 - 3. Listed DBE fails or refuses to perform subcontract or furnish listed materials.
 - 4. Consultant stipulated that a bond was a condition of executing subcontract and listed DBE Subconsultant failed or refuses to meet the bond requirements of Consultant.
 - 5. Work performed by listed Subconsultant is substantially unsatisfactory and is not in substantial conformance with scope of work to be performed, or Subconsultant is substantially delaying or disrupting the progress of work.
 - 6. When it would be in the best interest of the State.

E. At a minimum, Consultant's substitution request to the Caltrans Contract Manager must include a:

- 1. Written explanation of the substitution reason and, if applicable, Consultant must also include the reason a non-DBE Subconsultant is proposed for use.
- 2. Written description of the substitute business enterprise, including 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.

F. Prior to the approval of Consultant's substitution request, the Caltrans Contract Manager must give written notice to the Subconsultant being substituted by Consultant. A copy of the notice sent by the 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 Consultant is requesting substitution of the listed Subconsultant;
- 2. Give the listed Subconsultant five working days within which to submit written objections to DPAC and copies to the Caltrans Contract Manager;
- 3. Notify the Subconsultant 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 Subconsultant.

The listed Subconsultant, who has been so notified, shall have five working days within which to submit written objections of the substitution to the Caltrans Contract Manager. Failure to submit a written objection shall constitute the listed Subconsultant's consent to the substitution.

G. If written objections are filed by the listed Subconsultant, DPAC will render a written decision. DPAC shall give written notice of at least five (5) working days to the listed Subconsultant of a hearing by Caltrans on Consultant's request for substitution.
DBE Credit

26.53(i)

Non-A&E Contract Boilerplate Language

4 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
- C. 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.
- D. 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.

- E. 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 owneroperator 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 owneroperator. 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.

A&E Contract Boilerplate Language

A. Credit for DBE Prime Consultants

Consultant, 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 Subconsultants.

DBE Credit

26.55(a)

Non-A&E Contract Boilerplate Language

4 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
- C. 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.
- D. 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.

- E. 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 owneroperator 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 owneroperator. 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.

Figure 1 Payment to DBE and Non-DBE Subcontractor(s)

- A. Contractor shall pay its DBE Subcontractor(s) and non-DBE Subcontractor(s) within ten (10) 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 the 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 the 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 23 below entitled, "DBE Substitutions."
- C. Contractor shall also submit to the 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 the 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 nonpayment to Contractor or deficient subcontract performance or noncompliance by a Subcontractor.

A&E Contract Boilerplate Language

4 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 Consultants

Consultant, 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 Subconsultants.

Commercially Useful Function

26.55(c)

Non-A&E Contract Boilerplate Language

Ferformance 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 23 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.

A&E Contract Boilerplate Language

4 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 are 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 that 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.

EDMUND G. BROWN Jr., Governor

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

(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 <u>percent</u> (__%).

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, <u>Disadvantaged Business Enterprise (DBE)</u> Information and Instructions for <u>Bidders</u> 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 <u>ADM-3069</u>, <u>Disadvantaged Business Enterprises Utilization Report</u> 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.



Flex your power! Be energy efficient

I. AUTHORITY AND BIDDER'S RESPONSIBILITY

This solicitation is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled <u>PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF</u> <u>TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS</u>. 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, <u>Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts</u> <u>Documentation</u>. 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.

- 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 <u>Office of</u> <u>Certification toll free number 1-866-810-6346 for assistance</u>.
- Access the CUCP database from the Department of Transportation, Office of Business and Economic Opportunity (OBEO) web site at: <u>http://www.dot.ca.gov/hq/bep/</u>.
 - Click on the blue <u>DBE Search Click Here</u> 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: <u>http://www.census.gov/epcd/naics02/def/ND237310.HTM.</u>

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.
- 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 <u>limited to</u> 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 <u>prior written approval</u> 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, <u>Disadvantaged</u> <u>Business Enterprises Utilization Report</u> 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	AGREEN	AGREEMENT NUMBER	CONTRACT DOLLAR AMOUNT		DATE
CONTRACTOR'S BUSINESS ADDRESS	CITY		12	STATE	ZIP CODE
CONTACT PERSON	BUSINESS PHONE ()	FAX NUMBER ()	EMAIL ADDRESS	DRESS	

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.

 Prime and Subcontractors: List Name(s) and addresses of all DBEs that will participate in this Agreement: 	(2) Area Code & Phone Number		(3) (4) Description of Work, Tier Service, or Materiel Supplied	Mork, Supplied	(5) DBE or CUCP Certification Number.	(6) Ownership Code	(7) DBE \$ Amount Claimed	(8) % of \$ Value Claimed	(9) Caltrans Use Only %
		2 7 7							
									4
PART C – FOR CALTRANS USE ONLY (Verification Completed by Civil Rights, Office of Business and Economic Opportunity):	ompleted by Civ	vil Righ	hts, Office of Business and Eco	nomic Opportuni	ty):				
PRINT VERIFIER'S NAME AND TITLE	0)	SIGNATURE	TURE	DATE	TE	CIVIL	CIVIL RIGHTS STAMP OF APPROVED	APPROVED	
DBE 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

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

3 = Native American

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	Children and Arthough and Children and Children and Arthough Arthough Children and Arthough Children and Arthough Children and Arthough Arthough Children and Arthough Arth	certified DBE Prime and Subcontractors) and c blier(s) that will be used in the Agreement.	complete addresses of all certified DBE
Column 2	Enter the area code and phone	e number of the corresponding certified DBE li	sted in Column 1.
Column 3		ber for each DBE correspondingly listed in Co bcontractor/Supplier of level 1 Primary Subco	
Column 4	Enter a description that briefly firm listed in Column 1.	captures the work to be performed or supplies	to be provided by each corresponding DBE
Column 5	acceptable. DBEs must be ce		ed in Column 1. Self-certification is NOT B or RFP. For more certification and verification ntaged Business Enterprise (DBE) Program and
Column 6	Enter the correct Ownership C	ode 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

Column 7-8 Enter the dollar and/or percentage (%) of the dollar (\$) value claimed for each corresponding DBE listed in Column 1.

9 = Not Applicable

6 = Caucasian

EXAMPLE:

PART B – DBE INFORMATION AND DOCUMENTATION (Refer to Instructions in Page 2 of this form. Bidder/Proposer shall verify DBE certifications.)

ofal	.ist Name(s) and addresses I DBEs that will participate in 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%	
2В	Joe Subcontractor Inc., 4567 Joe's Street, Joe's City, CA, 07654	(XXX) 111- 0000	1	Design, surveys, environmental testing	000000000000000000000000000000000000000	6	42,000	42%	
1	upplier International LLC, 100 X Street, Supplier's itv. CA. 45670	(111) XXX- 0001	2	Survey instruments, testing materials	1111111111 11	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.

CON IRACTOR'S NAME	OK'S NAME					r	DAIE
BIDDER/PF documental for making (DBE subcol Bidder/prop GFE when <u>1</u> Enterprise (Bidder/Pro	ROPOSER INS tion to demonst GFE to protect ntractor was no oser made a m no contract goa DBE) Good Fai DBE) Good Fai	TRUCTIONS: Subr trate that adequate g its eligibility for awar at certified by Caltran: tathematical error res als have been attaine ith Efforts Document. Insible to: (1) ensur	BIDDER/PROPOSER INSTRUCTIONS : Submittal of only the Disadvantaged Business Enterprise (DBE) Information/Particip documentation to demonstrate that adequate good faith efforts (GFE) were made by the bidder/proposer. Bidder/proposers <u>p</u> for making GFE to protect its eligibility for award should Caltrans, in its evaluation, find that the goal was not met. Examples of DBE subcontractor was not certified by Caltrans or a state or local participating agency that has a reciprocal agreement with C Bidder/proposer made a mathematical error resulting in failure to meet the goal. <u>Bidder/Proposer must make an adequate GF</u> GFE when <u>no contract goals have been attained</u> or when <u>only partial goal(s) have been attained</u> . bidders/proposers shall content prise (DBE) Good Faith Efforts Documentation form, ADM-0312f, and submit the requested information below with its bidder/Proposer is responsible to: (1) ensure information is complete and accurate, and (2) verify DBE certifications.	siness Enterpri by the bidder/p find that the gr jency that has a sidder/Propose been attained t the requested currate, and (2	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 <u>prosing goal attainment should always submit documentation</u> 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. <u>Bidder/Proposer must make an adequate GFE to be responsive.</u> When applying for a determination of a GFE when <u>no contract goals have been attained</u> or <u>Nhnen only partial goal(s) have been attained</u> bidder/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.	M-0227f, may not provi <u>imment should always s</u> n may include but are r bid/proposal due date. <u>sive.</u> When applying fc <u>sive.</u> When applying fc date and time.	de sufficient submit documentation not be limited to: 1) A and time; or 2) or a determination of a ged Business
1. ADVEF List names copy of the	RTISEMENT DK and dates of ea advertisement	 ADVERTISEMENT DOCUMENTATION List names and dates of each general circulation copy of the advertisement or proof of publication. 	newspaper, trade paper an	ority focused p	id minority focused paper or other publication in which a request for DBE participation was placed. Attach a	or DBE participation w	as placed. Attach a
T	TITLE OF PUBLICATION	ICATION	PUBLICATION DATE(S)	(5	TITLE OF PUBLICATION	PUBLICAT	PUBLICATION DATE(S)
2. DBE Do a. Lis b. Lis d. Lis d. lde	DBE DOCUMENTATION a. List the names and d b. List the dates and me c. Attach a copy of any d. Identify information si	ON Id dates of written no I methods used for fo iny solicitation packa n submitted to the bi	EDOCUMENTATION List the names and dates of written notices sent to certified DBE firms soliciting bids for the contract. List the dates and methods used for following up initial solicitations to determine with certainty wheth Attach a copy of any solicitation package, phone records, fax confirmations or solicitation follow-up or dentify information submitted to the bidder for this solicitation:	liciting bids for ermine with cer ns or solicitation	DOCUMENTATION List the names and dates of written notices sent to certified DBE firms soliciting bids for the contract. List the dates and methods used for following up initial solicitations to determine with certainty whether or not the DBEs were interested. Attach a copy of any solicitation package, phone records, fax confirmations or solicitation follow-up correspondence sent to DBE firms. Identify information submitted to the bidder for this solicitation:	is.	
Check the a	Check the appropriate box:			RFP	🗖 RFQ		
SOLICITATION	NOI						
DATE MAILED	DATE PHONED	DATE OF FOLLOW-UP	FOLLOW-UP METHOD PHONE/EMAIL	all the	NAME OF FIRM SOLICITED	CONTACT NAME	PHONE NUMBER
2							

STATE OF CALIFORNIA · DEPARTMENT OF TRANSPORTATION BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION ADM-0312f (REV 06/2012) Page 1 of 4

CONTRACTOR'S NAME	OR'S NAME					2
2. DBE D	OCUMENTATI	DBE DOCUMENTATION (Continued)		-		
SOLICITATION	TION					2
DATE MAILED	DATE PHONED	DATE OF FOLLOW-UP	FOLLOW-UP METHOD PHONE/EMAIL	NAME OF FIRM SOLICITED	CONTACT NAME	PHONE NUMBER
3						
3. ITEMS Identify the Bidder/Proj	 ITEMS OF WORK Identify the items of work n Bidder/Proposer shall dem 	nade available to DBI onstrate that sufficier	E firms, including, where approprie t work to facilitate DBE participati	 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. 	feasible units to facilitat	e DBE participation.
ITEMS OF	WORK:		2			

STATE OF CALIFORNIA · DEPARTMENT OF TRANSPORTATION BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION ADM-0312f (REV 6/2012) Page 2 of 4

BREAKDOWN OF ITEMS:

CONTRACTOR'S NAME						IFB OR RFP OR RFQ NUMBER
 DBE RESPONSES List the DBE firms that responded or submitted bids/proposals to your solicitation for participation in this contract that were not accepted. 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 	Ibmitted bids/proposals to your sc ortion of work, and the reasons fo	olicitation fo r your choid	r participat ce. Attach	tion in this copies of	contract th quotes fro	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	RESPO	ONDED	SELECTED	TED NO	GIVE REASON FOR NON-SELECTION AND A SLIMMARY OF DISCUSSIONS
		3	2	2	2	
5. ASSISTANCE TO DBES – Bonding, Insurance, etc. Identify efforts to assist DBEs in obtaining bonding. lines of credi	nding, Insurance, etc. Ing bonding, lines of credit, insura	nce, and/o	any techr	nical assist	ance relat	 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.

STATE OF CALIFORNIA · DEPARTMENT OF TRANSPORTATION BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION ADM-0312f (REV 06/2012) Page 3 of 4

 ADDITIONAL DATA Provide any additional data to support a demonstration of GFE such as contacts with recruiting, and using DBE firms. Attach copies of requests to agencies and any response of requests to agencies and any response 		DBE assistance agencies. Identify the names of agencies, organizations, and groups providing assistance in contacting,
NAME OF AGENCY/ORGANIZATION	METHODS/DATE OF CONTACT	RESULTS

STATE OF CALIFORNIA · DEPARTMENT OF TRANSPORTATION BIDDER/PROPOSER DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOOD FAITH EFFORTS DOCUMENTATION ADM-0312f (REV 06/2012) Page 4 of 4

CONTRACTOR'S NAME

DATE

IFB OR RFP OR RFQ NUMBER

California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT H

Division of Procurement and Contracts (Architectural and Engineering Contracts): Boiler Plate section

Contract Goals

26.51(d-g)

Contract Manager Handbook:

2.6.5 DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) GOALS/SMALL BUSINESS (SB) GOALS/DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Certain businesses are eligible to be certified as a DVBE and a SB. Firms interested in certification as a DVBE or SB should contact the DGS Procurement Division.

The State of California currently has a goal to contract at least 25 percent of contract dollars with "certified" SB and three percent with DVBE firms.

Caltrans also strives to increase the level of participation of disadvantaged businesses in all federal contracting activities. The overall statewide annual Department DBE goal is currently 12.5 percent. Pursuant to federal regulations, to participate in our program qualifying firms must first be certified as a DBE by the Office of Business and Economic Opportunity (OBEO).

Contract Managers have primary responsibility for setting DVBE Goals and achieving DBE participation. The OBEO may assist Contract Managers in that effort. Non- competitively bid contracts and non-public agency contracts also are subject to the same goals. When setting goals, Contract Managers should evaluate:

- 1. the type of work to be performed;
- 2. items of work to be provided (materials, equipment, supplies, or services); and
- 3. availability of subcontractors in the area where the work will be performed (OBEO generally recognizes a minimum of three (3) certified firms within 100 miles of the project to indicate sufficient subcontractor capability).

Subcontractors must provide or perform a separate and distinct element of work that will be used during the term of the contract to fulfill the contract requirements.

Names of DVBE or DBE firms can be obtained in one of the following ways:

- 4. Names of certified DVBE firms can be obtained from the Cal eProcure website: <u>https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx</u>
- 5. Access the OBEO website to find a certified DBE firm: <u>http://www.dot.ca.gov/obeo</u>

Contract Managers requesting contracts be processed with no goals or percentages must place an "X" in the "No Goals" box on ADM-0360 and **attach written justification approved**

by OBEO prior to the submittal of ADM-0360 to DPAC. The justification for "No Goals" must contain a signature block for OBEO and, if the estimated cost of the work is more than \$100,000, the signature of the HQ Division Chief or Deputy District Director is required on the justification. A list of potential certified firms that could perform as prime Contractors must be attached to the justification request submitted to OBEO. Refer to the ADM-0360 instructions.

If contracts are funded by state or state/local funds, Contract Managers set goals for DVBE subcontractor participation. If contracts are wholly or partially funded with federal funds, Contract Managers set percentages for DBE subcontractor participation. Goals may be set at less than or greater than (even up to 100 percent) the annual goal established by Caltrans for a specific solicitation, project, or contract.

Currently there is no race-conscious DBE program, which set specific DBE contract participation goals that prime Contractors had to meet or demonstrate Good Faith Efforts (GFE), to the satisfaction of Caltrans, in order to be awarded contracts as responsive and responsible bidders. However, we still have an obligation to the DBE community and mandate from the Federal Highway Administration (FHWA) to try to meet the overall statewide DBE goal of 12.5 percent for federally funded contracts.

A. Setting the DBE Participation Percentage

DPAC partners with Contract Managers in identifying whether or not DBE Participation is applicable by applying the following criteria:

- 1. Type of work to be performed;
- 2. Dollar value of the contract;
- 3. Subcontractable items available;
- 4. Comparison to similar contracts with a DBE participation; and
- 5. Availability of DBEs in the area where the work will be performed.

Contract Managers are strongly encouraged to set DBE Participation Percentages on contracts that have DBE subcontracting opportunities by applying the same criteria Contract Managers formerly used to set DBE goals.

If a participation percentage is not established, a no goal justification approved by OBEO is not required.

GFE – All Contracts/Subcontracts must comply 26.53(j)

A&E and Non-A&E Contract Boilerplate Language

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. 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** <u>)</u> to the Contract Manager with every invoice (refer to Exhibit B, Budget Detail and Payment Provisions).

Trucking 26.55(d)

A&E and Non-A&E Contract Boilerplate Language

- ✤ 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.
- (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.

Firm Ceased to be certified

26.55(g)

A&E and Non-A&E Boilerplate Language

4 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 the Caltrans Contract Manager within thirty (30) days.

Counting Credit

26.55(h)

A&E and Non-A&E Contract Boilerplate Language

4 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
- C. 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.
- D. 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.

- E. 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 owneroperator 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 owneroperator. 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.

<u>ATTACHMENT #</u> Sample Consulting Services Agreement (Federal)

Delete if not a Sample Agreement

AGREEMENT NUMBER

REGISTRATION NUMBER

1						
1.	This Agreement is entered into between the State Agency and the Contractor na	ned below:				
	STATE AGENCY'S NAME					
	California Department of Transportation (Caltrans)					
	CONTRACTOR'S NAME					
2.	The term of this For DGS Approval add: or upon	through				
	Agreement is: DGS approval, whichever is later					
3.	The maximum amount					
	of this Agreement is: (Enter the spelled out dollar value here)	Delete this text box if not				
4.	The parties agree to comply with the terms and conditions of the following exhib	ts applicable	f the			
-	Agreement.	Note to Bidders:				
	Exhibit A – Scope of Work	The following pages	Pages			
	Exhibit B – Budget Detail and Payment Provisionsrepresent a sample of the Agreement that will be awarded, if any, from this RFP. Please review it carefully and presentExhibit D - Special Terms and ConditionsGTC 610)					
	Reference additional "Exhibits" and "Attachments" here:	any questions in writing to the				
	Exhibit E – Additional Provisions (For provisions that are uncommon. Delete if contact identified for this RFP.					
	Attachment 1 - Cost Proposal Delete if not applicable or revise		J Pages			
	Attachment 2 - Technical Proposal Delete if not applicable or revise		Pages			
	Attachment 3 – Subcontractor Provisions/List (ADM 1511) (Delete if not app	licable or revise)	Pages			
	Attachment 4 – DBE Participation (ADM-0227f) (Delete if not applicable or		Pages			
	Attachment 5 - Disadvantaged Business Enterprises Utilization Report (ADN		Pages			
			0			

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		California Department of General
CONTRACTOR'S NAME (if other than an individual, state whether a corporation	n, partnership, etc.)	Services Use Only
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)		
<i>赵</i>		
PRINTED NAME AND TITLE OF PERSON SIGNING		Exempt per:
ADDRESS		

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 (<u>CCC-307</u>) 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

Contractor's Name Agreement Number Page 3 of 3

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

Contractor's Name Agreement Number Page 3 of 5

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 <u>or</u> 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 nonrepresented 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 <u>Allowable Costs and Payments Clause</u> is to be <u>used in standard Agreements with</u> <u>Foundations.</u>

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. <u>Exception:</u> 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.
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.

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

Contractor's Name Agreement Number Page 4 of 18

EXHIBIT D

Consulting Services Agreement (Federal)

"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.

- 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:
 - 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 Stateowned 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).

Contractor's Name Agreement Number Page 6 of 18

EXHIBIT D

Consulting Services Agreement (Federal)

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.

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.

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 owneroperators, 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.

EXHIBIT D

Consulting Services Agreement (Federal)

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.

Contractor's Name Agreement Number Page 10 of 18

EXHIBIT D

Consulting Services Agreement (Federal)

- 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

Contractor's Name Agreement Number Page 11 of 18

EXHIBIT D Consulting Services Agreement (Federal)

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:

- 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.

- 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.

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

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

Contractor's Name Agreement Number Page 15 of 18

EXHIBIT D Consulting Services Agreement (Federal)

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.

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 <u>all</u> 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

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
 - 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.

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
 - 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

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'

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.

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

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, its employees and Contractor, its employees and Contractor shall sign all such applications over to the Department, its successors, and assigns. The Contractor, its employees and Contractor's Subcontractor's Subcontractor'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:

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

Prohibited from Contracting with Public Entities in California per the Iran Contracting Act, 2010 (<u>http://www.documents.dgs.ca.gov/pd/poliproc/Iran%20Contracting%20Act%20List.pdf</u>), 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.

PART III: Federal Transit Administration DBE Program Plan

PART III: Federal Transit Administration DBE Program Plan

A. 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. This clause applies to both DBE and non-DBE subcontracts.

Caltrans reserves the right to withhold progress payments from the prime contractor in the event prompt payment is not adhered to. The following are examples of prompt payment clauses within Caltrans' contracting language:

- Division of Rail and Mass Transportation: Exhibit C Master Agreement (See Attachment I.)
- Division of Transportation Planning: 2015 Regional Planning Handbook http://www.dot.ca.gov/hq/tpp/offices/orip/owp/index_files/RPH_Final_May-2015.pdf

Retainage: §26.29(b)

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

Compliance/Title VI Program Branch: OBEO's Compliance/Title VI Program Branch conducts reviews/investigations as a result of risk based assessments in addition to conducting reviews/investigations of complaints related to DBEs participating on active Caltrans contracts. Types of complaint investigations may include, but not be limited to, evaluating commercially useful function (CUF), independence issues, and DBEs acting as an extra participant. Findings are reported to the OBEO Assistant Director, and may also be communicated to Caltrans Division of Construction, Legal Department, Labor Compliance, Division of Local Assistance, Audits and Investigations, and Federal Transit Administration, Office of Inspector General, and other government entities, for further review and/or action.

B. Directory §26.31(a)

Caltrans maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE.

The directory is accessible electronically on the OBEO Web site. 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. Work category codes supplement the NAICS codes with clear, specific, and detailed narrative descriptions of the type of work in which the firm is certified (follow this link to view the work codes:

<u>http://www.dot.ca.gov/hq/bep/find_certified.htm</u>). Confidential information concerning DBEs is not shared. Caltrans updates the directory on a regular basis.

Caltrans currently holds the position as the CUCP chair, of the CUCP committee. Caltrans verifies that no CUCP member has a separate UCP directory claiming to reflect all DBE firms in the state. Caltrans makes the directory available in print upon request. The printed version of the directory is updated annually, for the most current list, download and print the directory from the Web site at: <u>www.dot.ca.gov/hq/bep/find_certified.htm.</u>

C. Overconcentration §26.33

Caltrans has determined there is no evidence of overconcentration of participation with DBEs on Caltrans' contracts. Caltrans in relies, in part on 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, with its Commitment at Award monthly report, which tracks DBEs listed on contracts toward contract goal, this report can be found at: *http://www.dot.ca.gov/hq/bep/reports.htm.*

D. Business Development 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 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, including DBEs, 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.

E. Monitoring and Enforcement Mechanisms §26.37

The following monitoring and enforcement mechanisms are taken by Caltrans to ensure compliance with 49 CFR Part 26:

- Caltrans will bring to the attention of the USDOT any instances of fraud or dishonest participation within the program. USDOT may then take the necessary steps provided in §26.109;
- Caltrans will consider similar actions utilizing its own legal authorities;
- Caltrans' OBEO Contractor Compliance Branch will investigate substantiated claims; and
- Caltrans will also provide a monitoring and enforcement mechanism to verify payment to subcontractors on subrecipient contracts.

Compliance/Title VI Program Branch:

OBEO's Compliance/Title VI Program Branch conducts reviews/investigations as a result of risk based assessments, in addition to conducting reviews/investigations of complaints related to DBEs with higher level participation on active Caltrans contracts. Compliance investigations may include, but not be limited to, evaluating commercially useful function (CUF), independence issues, and DBEs acting as an extra participant. Findings are reported to the OBEO Assistant Director, and may also be communicated to Caltrans Division of Construction, Legal Department, Labor Compliance, Division of Local Assistance, Audits and Investigations, as well as FTA, Office of Inspector General, and other government entities, for further review and/or action.

The overall function of the Compliance/Title VI Program Branch is to ensure Contractor Compliance, Title VI Compliance, and conduct Commercially Useful Function Reviews / Investigations on Disadvantaged Business Enterprise (DBE) firms performing on Caltrans projects. The Compliance/Title VI Program Branch will conduct on-site visits to the offices of the firms and to the job sites where the work is being performed.

When conducting investigations/Commercially Useful Function reviews - The three main objectives are:

(1) Ensure that dollars counted towards DBE goals are merited,

(2) Ensure the Federal Government funds entrusted to the State of California meet federal requirements, and

(3) Investigate potential DBE fraud.

Division of Procurement and Contracts:

The Caltrans Contract Manager is responsible for monitoring the Contractor for compliance with program requirements.

Caltrans' Contract Manager monitors the contract until it has concluded. Exhibit B, Invoice and Payment instructs the Contractor to submit the Disadvantaged Business Enterprise Utilization Report (ADM-3069) with each invoice (§26.37(c)).

The Caltrans Contract Manager is instructed to "review the form as submitted by the Contractor to ensure the form is complete and accurate. Once you receive the ADM-3069 from the Contractor, enter the total (or percent) of Federal (only) dollars (being used in the

Agreement) on the form, then sign, date, and Email <u>smallbusinessadvocate@dot.ca.gov</u> or FAX to 916-324-1949."

Policy and Reports Branch:

The Policy and Reports Branch Collects the following forms as it relates to DBE reporting:

- ADM 227F-AE Disadvantaged Business Enterprise (DBE) Information for A&E Contracts (DPAC)
- ADM 3069-AE Disadvantaged Business Enterprises Utilization Report (DPAC)

All DBE commitment forms are received by the Policy and Reports Branch on a monthly basis. These commitment forms are provided by the Contract Evaluation Branch after the commitment has been approved or adjusted, this is done to ensure that the "Monthly Commitment at Awards" report provided by this branch only contains the most accurate information.

The monthly payment reports submitted to the Policy and Reports Branch are tracked throughout the life of the contract. The DBE Data Coordinator, with the Policy and Reports Branch, ensures accuracy of the data provided by the reporting divisions prior to including the information into the semi-annual uniform report.

Once a contract is reported as "accepted" the Policy and Reports Branch begins reaching out to the appropriate Contract Manager to remind them for the need of the ADM 3069. This information is reported in January of each year for all closed federal contracts from the previous Federal Fiscal Year.

F. 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 K.

I. Goals, Good Faith Efforts, and Counting

A. Set-asides or Quotas §26.43

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

B. Overall Goals §26.45

A description of the methodology to calculate the overall goal and the goal calculations can be found on the OEBO Web site at: <u>http://www.dot.ca.gov/obeo/</u>. This section of the program will be updated on a triennial basis and any time there is an adjustment made to the overall goal.

In accordance with §26.45(f) Caltrans will submit its overall goal to the DOT no later than August 1, of each triennial year. Caltrans' next proposed triennial goal and methodology

are due to USDOT by August 1, 2019. Before establishing the triennial goal, Caltrans will consult with its contracted Disparity Study consultant to obtain the relevant information concerning the current 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 the participation of DBEs on it contracting and procurement opportunities. Simultaneously, Caltrans will consult with minority, women's and general contractor groups, community organizations.

Following the consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rational are available for review during normal business hours at all Caltrans principal offices throughout the state and online, for 30 days following the date of the notice. Caltrans will also inform the public that we will accept comments of the proposed goal and methodology for no less than 30 days from the date of the notice.

A description of the methodology to calculate the overall goal and the goal calculations can be found on the OEBO Web site at: <u>http://www.dot.ca.gov/obeo/</u>. This section of the program will be updated on a triennial basis and any time there is an adjustment made to the overall goal.

C. Shortfall Analysis §26.47(c)

Should Caltrans fall short of achieving its overall DBE goal by the end of each Federal Fiscal Year, a shortfall analysis must be submitted to the FTA by December 30, of that year. This document, signed by Caltrans' Director, provides an analysis of Caltrans' efforts in an attempt to meet the goal, what contributing efforts may have played a role in the shortfall, as well as outline corrective actions to achieve the goal in the upcoming year.

D. Section 26.49 Transit Vehicle Manufacturers Goals

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. Alternatively, [Recipient] may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

E. Breakout of Estimated Race-Neutral and Race-Conscious Participation §26.51(a-c)

The current breakout of estimated race-neutral and race-conscious participation can be found in Attachment J to this program. This section of the program will be updated triennially and monitored and adjusted based on monthly monitoring described in Section 26.11 to adjust contract goals to enable Caltrans to meet its overall DBE goal.

F. Contract Goals §26.51(d-g)

Caltrans will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. We do not establish a contract goal on every contract, and contract goals will be based on each 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. Caltrans currently has a race-conscious DBE Program for FTA funded contracts and grants. Therefore, in addition to those race-neutral measures, Caltrans and its subrecipients set individual contract goals on applicable contracts, procurements, and grants with subcontracting opportunities.

G. Good Faith Efforts and Procedures §26.53

Demonstration of Good Faith Efforts §26.53(a)(c)

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting god faith efforts.

Caltrans' OBEO, Contract Evaluation Branch (CEB) reviews all DBE commitment information submitted as a result of bid when a contract goal is assigned. When reviewing a good faith effort submission, CEB reviews several factors in determining whether a bidder has demonstrated adequate good faith efforts to meet the contract goal, including:

- The bidders' overall DBE commitment,
- The total of goods and services made available to DBE firms,
- The quantity of DBE solicitations made,
- Reason(s) for rejecting DBE quotes,
- The relative DBE commitments and Good Faith Efforts made by other bidders.

In its determination, the CEB ensures the completeness and accuracy of documents such as the contact lists, publication proof, solicitation letters, fax/email transmissions, and quotes from DBEs and non-DBEs.

For trucking bid items, the CEB will verify the DBE trucking firm is certified to perform the work. The CEB will contact the bidder to determine how it used the DBE's quote to arrive at its commitment amount. The CEB will question the bidder on how many and what types of trucks are needed to do the work and the number of trucks owned by the DBE trucker. The CEB will get copies of the current registration(s) or non-operating permit(s) for each truck. CEB will ask the bidder if the DBE trucker will be brokering any trucks, if so verify the certification, registration(s) and non-use permit(s) and brokerage fee credit for non-DBE trucks.

For DBE bulk suppliers CEB will verify the DBE has enough trucks or existing lease agreements for enough trucks to perform the work. CEB will also have the DBE sign a written declaration declaring their drivers will be driving the leased trucks. CEB will get clarification on the origin and destination of the materials to be supplied. CEB will question the bidder on who will be paying for the material.

Once a determination is made CEB writes a letter with its findings and supporting data to the awarding division and bidder. Should the good faith effort of a bidder be rejected the CEB will include in their decision letter the areas of deficiency by the bidder. This may include, but not limited to, bidder comparison of DBE quotes accepted by another bidder/proposer, list of available DBEs based on the work codes and work area in the CUCP database.

Design-Build contracts require a slightly different Good Faith Effort documentation process. Instructions to Proposers of the RFP directs all proposers to submit a DBE Performance Plan which includes 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 DBE firms have been selected and the areas DBE firms are anticipated to be used. It is the proposer's responsibility to demonstrate 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, at minimum, demonstrate the proposers intent to meet the contract goal) when fully implemented, results 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 submit good faith efforts documentation demonstrating their efforts to achieve the DBE goal up to the proposal due date.

Administrative Reconsideration §26.53(d)

The Division of Rail and Mass Transportation and Division of Transportation Planning let contracts may be subject to Administrative Reconsideration with the Caltrans Reconsideration Panel:

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 Division of Engineering Services – Office Engineer 1801 30th Street, MS-9 Sacramento, CA 95816-8041

Three high level Caltrans Division/Office representatives make up the three-person panel. Those representatives are provided by the Division of Local Assistance, the Office of Business and Economic Opportunity, and the Division of Engineering, Contract Awards. The Division of Engineering, Contract Awards Chief chairs the Administrative Reconsideration Panel providing the final decision on behalf of the 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. 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. 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.

Subrecipients may follow a similar approach to the Good Faith Administrative Reconsideration process. The subrecipient must not allow the initial GFE decision making person or staff, to participate in the reconsideration process. The subrecipient will notify the bidder/proposer of the initial GFE findings, giving them the opportunity to request a reconsideration hearing.

Administrative Remedies for noncompliance §26.53(f)(3)

If the contractor fails or refuses to comply with the DBE substitution process in the specified time, the contract manager must provide a warning to the contractor. If the first warning is provided verbally, the contract manager must document the warning in their daily contract reports.

If the prime contractor replaces a listed DBE without written approval from the contract manager, payment for the items of work committed to the DBE must be temporarily withheld from the next progress payment. The prime contractor is sent a written notice of the improper substitution and payment is withheld.

If the substitution is found to be in violation of the Fair Practices Act, the contract manager may assess the prime contractor a penalty of up to 10 percent of the subcontract amount. Any temporary withholds become permanent when a violation is confirmed. Federally funded contracts require the contractor to report a DBE firm that becomes certified or decertified during the course of the project. A DBE subcontractor that becomes decertified during the course of the project must notify the contractor in writing with the date of decertification. In the same manner, a subcontractor in writing with the date of certification. The prime contractor must notify the resident engineer if the contractor becomes aware of a DBE obtaining or losing its certification during construction.

The contractor must still honor contractual commitments with a DBE firm performing work on the contract even if the DBE loses its certification during construction. No substitution is required. For federal reporting purposes only, DBE credit for Caltrans will be limited to payments made while the firm was certified.

Good Faith Efforts when a DBE is replaced on a contract §26.53(f)(g)

Caltrans and its subrecipients will require a contractor to make good faith efforts to replace a DBE that is terminated or otherwise failed to complete its work on a contract

with another certified DBE, to the extent needed to meet the contract goal. Contractors are required to notify the contract manager immediately of the DBE's inability or unwillingness to perform or provide reasonable documentation.

The contractor is required to obtain prior approval of the substitute DBE from the contract manager. Should the contractor be unsuccessful in replacing the committed DBE with another DBE, then it is the responsibility of the contract manager to ensure the contractor has submitted sufficient documentation of good faith efforts. If the contractor is able to replace the committed DBE with another DBE, the contract manager must collect copies of the new or amended subcontracts.

If the Department authorizes the termination or substitution of a listed DBE, the prime contractor must make good faith efforts to find another DBE. 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. Documentation of good faith efforts must be submitted within 7 days of the request for authorization of the substitution. The Department may authorize a 7-day extension of this submittal period by request.

Unless the Department authorizes a request to terminate or substitute a listed DBE, the Department does not pay for work unless it is performed or supplied by the DBE listed on the DBE Commitment form. Other sanctions may be levied under 49 CFR 26.

It is the responsibility of Caltrans' contract manager to either approve or deny any Good Faith Efforts submitted in an attempt to substitute a DBE on a contract. A copy of the GFE and all relevant documentation, including the approval or denial of the GFE are to be kept in the contract file and reported to the Policy and Reports Branch for tracking.

DBE Prime Credit §26.53(i)

If the bidder is a DBE firm, the CEB will review the firm's DBE certification. The CEB will review the work codes assigned to the DBE firm and compare the codes to the bid items on the contract. The DBE bidder must be certified to perform/provide at least 30 percent of the work on the project.

Subcontracts §26.53(j)

Caltrans requires the contractor to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

H. Counting DBE Participation §26.55(a-h)

Caltrans counts DBE participation toward the Departments overall and contact goals as provided in 49 CFR 26.55. Caltrans has incorporated the DBE credit application in its
boiler plate contract language and subrecipient guidance. The following are excerpts from the Caltrans' contracting language:

- Division of Procurement and Contracts (Non-A&E & Service Contracts): Non-A&E Boiler Plate Contract Language – DBE Credit

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
- C. 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.
- D. 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.

DBE Trucking Credit information can be found in section §26.55(d) of this program plan.

Additional Measure for Properly Counting DBE toward Contract Goal Credit:

The Contract Evaluation Branch ensures all DBE firms listed for credit on a USDOTassisted contract is currently certified at the time of bid opening. At the same time verifying the firm has all of the relevant licenses and work codes for the work they have been listed to perform for DBE credit.

Caltrans' Certification Branch aligns work codes closely to NAICS codes and licenses held by the disadvantaged business owner(s). These work codes were developed by the Caltrans Certification Staff within and are meant to be narrowly tailored towards Caltrans applicable work. Codes are only assigned, as part of the certification process, on approval of the firm's certification after a comprehensive review of the firm's primary activities and a site visit has been conducted based on 49 CFR Part 26. Additional work codes (and NAICS codes) are assigned during the life of the firm upon their request, but only after additional review with supporting documentation of their ability to perform the requested work code(s) and justification for the additional codes being sought. Another site visit may be conducted on an as needed basis.

These initial efforts by the Certification Branch to verify applicable work codes assigned to the certified DBE firms, helps to ensure the Contract Evaluation Branch as well as the bidder/offeror are able to verify the firm's capabilities prior to commitment and contract award. A supplier's role as a regular dealer or broker is evaluated on a "project by project" basis. For the database holding the work codes and correlating NAICS codes please visit the OBEO Web site at: http://www.dot.ca.gov/hq/bep/find_certified.htm.

Joint Ventures §26.55(b)

The DBE joint venture partner must share in the capital contributions, control, management, risks and profits of the joint venture. The prime contractor who wishes to use a DBE joint venture must attach and submit the joint venture agreement.

DBE Commercially Useful Function §26.55(c)

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.

- Division of Procurement and Contracts Non-A&E: Boiler Plate Language -Performance of DBE Contractors and other DBE Subcontractors/Suppliers (See Attachment G.)

- 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 (See Attachment D.), 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 23 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.

Additional Monitoring and Enforcement Mechanisms

The OBEO Contract Evaluation Branch (CEB) will investigate claims of DBE noncompliance of commercially useful function on a USDOT assisted Caltrans project. Findings of these claims are reported to the OBEO Assistance Director, Caltrans Legal Department; Division of Construction; Labor Compliance; Office of Audits and Investigations; and FTA. Depending on relevance and severity of noncompliance, the Caltrans CEB may also send their findings to the Office of the Inspector General, California

State Licensing Board, and any other applicable local entities for further review and/or corrective action.

DBE Trucking §26.55(d)

At the time of DBE commitment, and prior to award, the OBEO's Contract Evaluation Branch contacts the bidder to determine how the trucking firm is quoted for use to ascertain the appropriate commitment credit. The Contract Evaluation Branch will research and ask the DBE trucking firm and the bidding contractor/proposer, at minimum, the following questions:

- The number of trucks needed to perform the committed work?
- How many trucks are owned by the DBE trucker?
- Obtain copies of registration(s) or non-operating permits for each truck?

USDOT allows the bidder to get credit only for work that can be performed by the DBE's trucks, as verified by registration(s) or non-operating permits, and brokerage fee credit for non-DBE trucks. "One-for-One" is not allowed on trucking when being used toward the contract goal.

For suppliers of bulk materials, the DBE must own at least one truck; other trucks, used to perform the work committed to by the DBE, must be a long term lease. Oil suppliers have been asked to provide a form affirming that only the businesses own forces will operate machinery and transport the materials.

DBE Credit to a Non-DBE & DBE Ceases to be Certified §26.55(f)(g)

Caltrans ensures no contractor/proposer will be given DBE credit toward contract goal commitment if a firm is not certified as a DBE at the time of contract execution. The Contract Evaluation Branch confirms all committed DBEs toward commitment goal credit are certified with the applicable licenses and work codes.

The Contract Evaluation Branch and the Policy and Reports Branch keep records of the suspension, removal of certification, or removal of applicable work codes for the certified firm. The Policy and Report Branch ensures no reported participation of a DBE is counted toward goal credit for that contract unless a DBE subcontract is already executed.

Counting DBE Participation and Contract Goal Credit §26.55(g)

Caltrans ensures that only the DBE participation toward the contract goal credit is not counted until the "Disadvantaged Business Enterprise (DBE) Final Utilization Report" is submitted once the contract has been accepted and prior to the final payment released to the contractor/proposer.

The following forms are collected:

- "Disadvantaged Business Enterprise (DBE) Final Utilization Report" 3069F, Division of Procurement and Contracts

Should a contractor not comply with the timely submittal of the DBE Final Utilization Report, Caltrans has the ability to withhold from the final payment to the contractor. No contract goal credit will be given until payment is made.

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

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, webbased 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.

ATTACHMENTS

CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTABED BUSINESS ENTERPRISE PROGRAM PLAN

ATTACHMENT A

Caltrans Executive Branch Organizational Chart



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

California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT B

Office of Business and Economic Opportunity Organizational Chart



California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT C

List of Internet and Website Addresses

CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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 DGS publishes advertisement on the Internet at:

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

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.html

California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT D

DBE Awards and Commitments Form

PARTA - CONTRACTORS INFORMATION (Refer to instructions in Fage 2 of this form, bidder/roposer shall ensure all information provided is complete and accurate.	structions in Page	A GI LI	is form. Bidder/Proposer	Shall ensure a	I Information pr	CALCON	I IS COMP	ete attu avvutate-j		
(A1) CONTRACTOR'S BUSINESS NAME			8	A2) AGREEMEN	NT NUMBER (A	(3) CO	VTRACT D	(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	R	(A1)	(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.)	TATION (Refer to In	Istruct	ons in Page 2 of this form.	. Bidder/Propo	ser shall verify	DBE c	ertification	ts or UDBE firms a	re certified as D	BEs .)
(1) List Name(s) and addresses of all DBEs/UDBEs that will participate in this Agreement:	(2) Area Code & Phone Number	Tier (3)	(4) Description of Work, Service, or Materials Supplied	Work, 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 <i>EXAMPLE</i> Jane Prime Inc., 1234 Jane's Street, Jane's City, CA, 04321	(XXX) 000-1111	0	Project management	ment	XXXXXXXX	Ŷ	7,5	48,000	48%	
2B EXAMPLE Joe Subcontractor Inc., 4567 Joe's Street, Joe's City, CA, 07654	(XXX) 111-0000		Design, Surveys, environmental testing	imental testing	000000000000	000	თ	42,000	42%	
EXAMPLE Supplier International LLC, 1100 X Street Supplier's City, CA, 45670	(111) XXX-0001	N	Surveys instruments, testing materials	sting materials	1111111111111	111	ω	10,000	10%	
			1							
PART C - FOR CALTRANS USE ONLY (Verification Completed by Civil Rights, Office of Business and Economic Opportunity):	mpleted by Civil R	lights,	Office of Business and Ec	onomic Opport	unity):					
(C1) PRINT VERIFIER'S NAME AND TITLE	(C1)	(C1) SIGNATURE	TURE		(C2) DATE			(C3) CIVIL RIGHTS STAMP OF APPROVAL	STAMP OF APPR	ROVAL
(C4) DBE Participation YES (S UD	(C5) UDBE Participation YES	(%)	NO					

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

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

ADM-0227F (REV 10/2009) Page 2 of 2 (CONTRACTS FEDERALLY FUNDED IN WHOLE OR IN PART)

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.

(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)	(A1) BUSINESS PHONE (A1) FAX NUMBER	(A1) EMAIL ADDRESS	ADDRESS			
PART B - DBE INFORMATION AND DOCUMENTATION (Refer to Instructions on Page 2 of this form. Proposer shall verify	ION (Refer to Instruct	ions or		DBE certifications.)				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(e)
List Name(s) and addresses of all DBEs that will participate in this Agreement	Area Code & Phone Number	Tier	Description of Work, Service, or Materials Supplied	CUCP Certification Number	Work Category Code	Ownership Code	Percentage Committed	Top Ranked Firm Use Only
						-		
								1
THE CONSULTANT ACKNOWLEDGES THAT IT MUST USE THE DBES LISTED ON THIS FORM TO MEET ITS DBE CONTRACT COMMITMENT (49 CFR 26.53)	IST USE THE DBES LI	STED	N THIS FORM TO MEET ITS DBE CONTRACT CO	JOMMITMENT (49 C	FR 26.53)			
CONSULTANT REPRESENTATIVE'S SIGNATURE			DATE					
CONSULTANT REPRESENTATIVE'S PRINTED NAME	Ē							

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION FOR A&E CONTRACTS

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

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.
- Enter the Contracting Tier number for each DBE listed in Column 1: 0 = Prime or Joint Consultant, 1 = Primary Subconsultant, Column 3 2 = Subcontractor/Supplier of level 1 Primary Subconsultant.
- Enter a description for the work/services to be performed or materials to be provided by each corresponding DBE firm in Column 4 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/hg/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 Submittel deadline, possess the work category code(s) applicable to the type of work it will perform on the contract.
- Enter the correct Ownership Code number below for the corresponding DBE listed in Column B. Column 7 1 = Black American 4 = Asian-Pacific American 7 = Woman 2 = Hispanic American 5 = Subcontinent Asian American 8 = Other 9 = Not Applicable
 - 6 = Caucasian 3 = Native American
- Enter the commitment percentage (%) (best estimate) for each firm listed in Column 1 for submittal of your SOQ. Enter a whole Column 8 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.

California Department of Transportation, Disadvantaged Business Enterprise Program Plan

ATTACHMENT E

ADM 3069 Form DBE Utilization Report

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISES UTILIZATION REPORT

ADM-3069 (NEW 06/2011)

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.

CONTRACT NUMBER	INVOICE NUMBER	TASK ORDER NUMBER (if applicable)	ADMINISTERING AGENCY Department of Transportation			CONTRACT STAF	RT DATE C	ONTRACT COMPLETI	ON DATE
			Division of Procurement and						
PRIME CONTRACTOR NA	ME (PRINT)		BUSINESS ADDRESS			TOTAL CONTRAC	CT AMOUNT:	\$	
						Contra	et Manager Mu	st Complete This Seci	ion:
PRIME CONTRACTOR REI	PRESENTATIVE NAME (PRINT)					Total Federal Shar	e Amount \$	OR	%
	DESCRIPTION OF	COMPANY NAME	DBE CERTIFICATION		OWNERSHIP	CONTRAC	T PAYMENTS	DATE WORK	PAYMENT
NO.	WORK PERFORMED AND MATERIEL PROVIDED	AND BUSINESS ADDRESS	NUMBER	GENDER	CODES(S)	NON-DBE	DBE	COMPLETE	DATE
0						\$	\$		
						\$	\$		
						\$	\$		
						\$	\$		
						\$.	\$		
					Ŭ	\$	\$		
						\$	\$		
ORIGINAL COMMITMENT		OWNERSHIP CODES:	e		TOTAL	\$	\$		
\$	OR	% 1= Black American 2= Hispanic American	6= Caucasian 7= Woman		Comments	1			
	UDBE	3= Native American 4= Asian Pacific American	8= Other						
\$	OR	% 4= Asian Pacific American 5= Subcontinent Asian Americ	9= Not Applicat an	016					
	DBE								

that approved at the time of award, provide comments. List actual amount paid to each entity.

I CERTIFY THAT T	HE ABOVE INFORMATION IS COMPLETE AND CORRECT	
CONTRACTOR REPRESENTATIVE'S SIGNATURE	BUSINESS PHONE NUMBER	DATE
TO THE BEST OF MY INFORMATION	NAND BELIEF, THE ABOVE INFORMATION IS COMPLETE AND CORRECT	
CONTRACT MANAGER'S SIGNATURE	BUSINESS PHONE NUMBER	DATE

COPY DISTRIBUTION (Required): (1) Original: Con

(1) Original: Contract Manager

(2) Copy: Office of Business and Economic Opportunity, Email: to smallbusinessadvocate@dot.ca.gov or FAX to 916-324-1949

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISES UTILIZATION REPORT

ADM-3069 (NEW 06/2011)

Contractor Instructions:

This form must be completed and submitted to the Caltrans Contract Manager with each invoice. Enter the Contract Number, Invoice Number, Task Order Number (if applicable), Contract Start Date, Completion Date (Expiration Date), Prime Contractor Name, Prime Contractor Business Address, Total Contract Amount (as written on the STD. 213).

This form has two columns for entering the dollar value for the item(s) of work performed or provided by the firm. The Non-DBE column is used to enter the dollar value of work performed by subcontracting firms who are not certified DBE. The DBE column is used to enter the dollar value of work performed only by certified DBE firms.

DBE prime contractors are required to show the corresponding dollar value of work performed by their own forces.

To confirm the certification status of a DBE, access the Department of Transportation, Office of Business and Economic Opportunity website at http://www.dot.ca.gov/hg/bep/find_certified.htm or call toll free (866) 810-6346 or (916) 324-1700.

If a contractor performing work as a DBE becomes decertified and still performs work after the decertification date, enter the total value performed by this contractor in the DBE column for the certification period and the remaining work or services (after decertification) in the Non-DBE column. If a subcontractor performing work as a non-DBE on the project becomes certified as a DBE, enter the dollar value of all work performed after certification as a DBE in the appropriate column.

Date Work Complete Column: Enter the date the work and/or Task order was completed for the respective pay period. Date of Payment column: Enter the date when the prime contractor made the payment to the firm for the portion of work listed as being completed. DBE prime contractors are required to show the date of work performed by their own forces.

Contractor's Signature: Contractor certifies that the information on the ADM-3069 is complete and correct.

Contract Manager's Instructions:

Review the form as submitted by the Contractor to ensure the form is complete and accurate. Once you receive the ADM-3069 from the Contractor, enter the total (or percent) of **Federal (only) dollars** (being used in the Agreement) on the form, then sign, date, and Email to smallbusinessadvocate@dot.ca.gov or FAX to 916-324-1949.

STANDARD AGREEMENT

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME: CALIFORNIA DEPARTMENT OF TRANSPORTION DIVISION OF RAIL & MASS TRANSPORTATION

CONTRACTOR'S NAME: [Organization Legal Name]

2. The term of this Agreement is:

FROM: [Contract Start Date] TO: [Contract End Date]

- 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 Project Summary and Scope of Work
 - Exhibit B Project Management and Payment Provisions
 - Exhibit C General Terms and Conditions
 - Exhibit D Special Terms and Conditions

Exhibit E - 49 USC Section 5333(b) Special Warranty for 5311 Program and 5339 Program (if required)

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		For Department of
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)		Transportation Use only
[Organization Legal Name]		
BY (Authorized Signature in Blue ink)	DATE SIGNED	
)		
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
[Address 1], [Address2], [City] [State] [Zip]		
STATE OF CALIFORNIA		
AGENCY NAME		
California Department of Transportation, Division of Rail and	Mass Transportation	
BY (Authorized Signature in Blue ink)	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING		
< <name manager="" of="" program="">>, <<#### Program Manage</name>	<mark>er>></mark>	
ADDRESS		1
1120 N Street MS-39, Sacramento, CA 95814		
AGENCY NAME California Department of Transportation, Division of Rail and BY (Authorized Signature in Blue ink) C PRINTED NAME AND TITLE OF PERSON SIGNING CADDRESS	DATE SIGNED	

Item	Chapter	Statute	Appr Category	Fund Title	Fund	CFDA	Program
2660-102-0890(2)	<mark>23</mark>	<mark>2016</mark>	17102F	Federal Trust	0890	<mark>20-509</mark>	[Program Common Name]

Current Encumbrance	[Total Encumbered]						
Prior Encumbrance	Prior Encumbered	Unit	Project ID	Phase	Object	Amount	State FY
Total Encumbrance	[Current + Prior]	<mark>3744</mark>	0017000158	S	049	[Current + Prior]	<mark>16/17</mark>

SIGNATURE	IF ACCOUNTING OFFICE (Authorized Signature in Blue Ink)	

DATE SIGNED

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.

EXHIBIT A PROJECT SUMMARY AND SCOPE OF WORK

Funding Program:	Funding Program
Project Type:	Project Type
Hours when PROJECT shall operate:	Start: Start Time End: End Time
Days/Dates when PROJECT shall operate:	Operation Date(s) here
Location where Service shall be offered:	Description of Service Area here

Detailed Description of Work:

Enter specific Project Description, including quantity, size, type, purpose of project, any program goals, performance measures, specifications and/or other relevant project attributes. Information provided

Contract Projects:

ALI	Project	Federal	Local	Toll	Total	Federal	Local
Code	Description	Share \$	Share \$	Credits	Cost	Share %	Share %
<mark>11.12.04</mark>	Purchase Replacement <30 Ft. Bus	<mark>\$9,999,999</mark>	<mark>\$999,999</mark>	<mark>\$999,999</mark>	<mark>\$9,999,999</mark>	<mark>100.00%</mark>	<mark>0.00%</mark>
<mark>11.12.04</mark>	Purchase Replacement <30 Ft. Bus	<mark>\$9,999,999</mark>	<mark>\$20,000</mark>	<mark>\$0.00</mark>	<mark>\$100,000</mark>	<mark>80.00%</mark>	<mark>20.00%</mark>

Contract Schedules:

Project Scheo	lule:	Construction/RE A	cquisition:	Procurement Sc	hedule:
Performance Start	05/11/2017	Enviro CEQA/NEPA	05/11/2017	Bid Package to Caltrans	05/11/2017
Performance End	05/11/2017	Design (PS&E)	05/11/2017	Issue RFP/IFB	05/11/2017
Last Date to Amend	05/11/2017	Right of Way	05/11/2017	Award Contract/PO	05/11/2017
Agreement Expires	05/11/2017	Construction	05/11/2017	Final Delivery/Install	05/11/2017
Final Invoice Due	05/11/2017				

Caltrans Project Contact:

Contact Name	Email Address	Phone Number
Contact Name	Contact Email	<mark>Contact Phone</mark>

EXHIBIT B PROJECT MANAGEMENT AND PAYMENT PROVISIONS

- 1. The California Department of Transportation (hereafter called the STATE) is the sole State agency authorized to evaluate and submit to the Federal Transit Administration (hereafter called FTA) grant requests from eligible program subrecipients for eligible program purposes. The FTA receives its authority from Chapter 53 of Title 49 of the United States Codes (USC). The STATE participates in a number of federal programs, which include the following programs, which are identified in 49 USC Chapter 53.
 - A. FTA Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities (5310 Program). The 5310 Program is discretionary, providing grant funding for the provision of transportation services meeting the special needs of seniors and/or persons with disabilities, for whom mass transportation services are otherwise unavailable, insufficient, or inappropriate. Eligible applicants are private nonprofit corporations, private for-profit corporations and public agencies. Applications are scored and prioritized for funding. FTA Circular 9070.1G "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions", dated July 7, 2014, (5310 Circular) and any later revision thereto, applies to any PROJECT funded by the 5310 Program.
 - B. FTA Section 5311 Formula Grants for Rural Areas (5311 Program). The 5311 Program funds projects in rural areas for the purposes of planning, public transportation capital projects, operating costs, job access reverse commute projects, and the acquisition of public transportation service. Available funds are determined based on an FTA formula that includes population and transit service miles. Eligible subrecipients may include states and local governmental authorities, nonprofit organizations, tribal governments, and operators of public transportation or intercity bus service that receive FTA grant funds indirectly through a recipient. Intercity bus projects are funded from a subprogram of the 5311 Program. The 5311(f) Subprogram is discretionary, with applications scored and prioritized for funding. Private for-profit operators of transit services or intercity bus services may participate in the 5311(f) Subprogram as third-party contractors for recipients or as subrecipients. FTA Circular 9040.1G "Formula Grants for Rural Areas: Program Guidance and Application Instructions", dated October 24, 2014, (5311 Circular) and any later revision thereto applies to any PROJECT funded by the 5311 Program or the 5311(f) Subprogram. Unless stated otherwise in this Agreement, any reference herein to the 5311 Program applies to the 5311(f) Subprogram.
 - C. FTA Section 5339 Bus and Bus Facilities Program (5339 Program). The purpose of the 5339 Program is to fund to eligible agencies the purchase of capital bus and bus-related projects that support the continuation and expansion of public transportation services. Funding is discretionary and applications are scored to determine funding priority. Eligible subrecipients include public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income. FTA Circular 5100.1 "Bus and Bus Facilities Formula Program: Guidance and Application Instructions, dated May 18, 2015, (5339 Circular) and any later revision thereto applies to any PROJECT funded by the 5339 Program.
- 2. This Agreement is subject to the Fixing America's Surface Transportation Act (FAST Act) (Federal Transportation Funding Law) (https://www.transit.dot.gov/FAST).
- 3. This Agreement is governed by numerous policies and guidance documents issued by the United States Department of Transportation (USDOT) and FTA, which includes:
 - A. USDOT Master Agreement (23), dated October 1, 2016, (USDOT Master Agreement) and any later revision thereto.
 - B. FTA Circular 4220.1F, "Third-Party Contracting Guidance," November 1, 2008, (Third-Party Contracting

Circular) and any later revision thereto.

- C. FTA Circular 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients", dated October 1, 2012, (Title VI Circular) and any later revision thereto.
- D. FTA Circular 5010.1D, "Grant Management Requirements" dated November 1, 2008, and revised August 27, 2012, (Grant Management Circular) and any later revision thereto.
- E. FTA Project and Construction Management Guidelines, as updated July 2011, (Project and Construction Management Guidelines), an advisory handbook published by USDOT.
- F. Fiscal Year 2017 Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements, as published December 20, 2016.
- 4. This Agreement is governed by the Caltrans State Management Plan (SMP), dated February 6, 2015, which is available at the Department of Transportation, Division of Rail and Mass Transportation's website (<u>http://www.dot.ca.gov/rail/docs/smp.update.2015.pdf</u>). If this PROJECT is funded from the 5339 Program, it is instead governed by State Management Plan FTA Section 5339 Program, dated July 2016, which is available at <u>http://www.dot.ca.gov/hq/MassTrans/Docs-Pdfs/5339/5339.smp.final.2016-07-29.pdf</u>.
- 5. The CONTRACTOR has been designated by the STATE as an eligible applicant under 49 USC Chapter 53 Section 5310, 5311, or 5339. The CONTRACTOR is proposing transportation services (hereafter called the PROJECT) that are eligible for assistance under the applicable Section of 49 USC Chapter 53.
- 6. The CONTRACTOR's application for a grant under 49 USC Chapter 53 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.
- 7. The CONTRACTOR agrees to provide transportation services that meet the specific requirements and intent of the applicable Program described in 49 USC Chapter 53, which is providing the funding for this PROJECT and with the CONTRACTOR's application for federal assistance, which is on file with the STATE.
- 8. The CONTRACTOR agrees to complete the defined PROJECT described in the grant application, which adopts all of the terms and conditions of this Agreement.
- 9. 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.
- 10. Transportation services under this Agreement shall be provided for a minimum of 20 hours per week.
- 11. It is the parties' intention that grant funds will be available for timely expenditure, commencing with the State fiscal year when this Agreement is executed. 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 closeout of this Agreement, any unreimbursed funds will revert as described in Exhibit B and no further invoices shall be paid to CONTRACTOR.
- 12. Any 5311 Program funds, exclusive of 5311(f) Program funds, awarded for PROJECT cannot be carried over more than one (1) year by the CONTRACTOR.

- 13. Invoices may be submitted no more frequently than once per month for the PROJECT.
- 14. The full PROJECT invoice, showing both Federal Share and Local Share, shall be submitted by CONTRACTOR to the STATE for review and approval prior to payment. The STATE verifies PROJECT costs and payments made to ensure that funding shares are reported accurately for the Federal Financial Report (SF-425) that the STATE must file pursuant to the award of federal grants.
- 15. Invoices shall meet all the requirements of this Agreement, be itemized in a manner consistent with the budget for PROJECT found in the PROJECT application, and be submitted through the STATE's BlackCat Grants system. Appropriate backup documentation to support all PROJECT costs to be reimbursed shall be included. Appropriate documents may include, but are not limited to, purchase orders, signed invoices for materials, supplies and equipment, and for travel describing the purpose of travel as it pertains to the PROJECT, classifications of employees performing PROJECT work, hourly rates, and identification of work to be reimbursed for the payment period, indirect costs (only if permitted by the STATE under Exhibit B), and subcontractor costs itemized similarly to those of the CONTRACTOR. CONTRACTOR's certification that goods or services purchased have been received and accepted shall accompany the invoice. 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 checks showing check number and "Paid in Full" or CONTRACTOR accounting records showing the transaction.
- 16. The CONTRACTOR's invoices and the vendor's invoices shall be consistent internally and with any purchase order applicable to the PROJECT 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 reimbursable under this PROJECT and any items not subject to sales tax. The latter 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.
- 17. Only work performed or goods or services received that fall on or between the Performance Period dates in Exhibit A are eligible for reimbursement. Invoices shall show dates of work, services or receipt of goods.
- 18. Eligibility for reimbursement of costs for the PROJECT shall be determined as follows.
 - A. For Public Agencies and Commercial Organizations, the net PROJECT cost and allowable individual items of PROJECT cost shall be determined in conformance with Code of Federal Regulations (CFR) 48, Federal Acquisition Regulations (FAR) Chapter 1 Part 31 "Contract Cost Principles and Procedures", 2 CFR Part 225 (formerly Office of Management and Budgets (OMB) Circular A-87) "Cost Principles for State, Local, and Indian Tribal Governments", FAR Chapter 1 Subpart 31.2, "Contracts with Commercial Organizations," and other applicable regulations, circulars, or memoranda that may be issued by FTA.
 - B. For Non-Profit Agencies, the net PROJECT cost and eligibility of individual items of PROJECT cost shall be determined in conformance with CFR Part 48, FAR Chapter 1 Part 31, 2 CFR Part 230 (formerly OMB Circular A-122) "Cost Principles for Non-Profit Organizations", and other applicable regulations, circulars, or memoranda that may be issued by the FTA.
- 19. Direct and Indirect Costs.
 - A. The CONTRACTOR shall comply with 2 CFR Part 225 or 2 CFR Part 230, as applicable, and certifies that all direct costs (and indirect costs, if permitted by STATE) billed are allowable. All direct costs, even for PROJECT administration activities must be adequately supported with proper documentation.

- B. For Public Agencies only in all programs besides the 5310 Program, indirect costs may approved for reimbursement at the discretion of the STATE and Program Manager. Indirect costs must be supported by an approved Cost Allocation Plan (CAP) and/or Indirect Cost Rate Proposal (ICRP). The CONTRACTOR shall obtain approval of the CONTRACTOR's CAP from the STATE's Audits and Investigations Office prior to submitting any invoices for payment for the PROJECT. Indirect charges incurred prior to STATE's approval of the CAP or ICRP are not an allowable expense.
- C. Under no circumstances are any indirect costs an allowable expense for a 5310 Program PROJECT.
- 20. Payment for services satisfactorily provided, work satisfactorily performed or goods received under this Agreement shall be made on a reimbursement basis and in arrears only for actual eligible costs.
- 21. Incomplete or disputed invoices shall be returned to CONTRACTOR, unpaid. Corrected invoices must be resubmitted to STATE prior to the payment of the invoice.
- 22. Upon STATE's review and acceptance of an undisputed invoice by the STATE, the STATE agrees to reimburse the CONTRACTOR for eligible costs. Reimbursement will be made at the rate of Federal Share percentage shown in Exhibit A, up to the total amount of Federal Share.
- 23. Final invoice shall be submitted to the STATE no later than ninety (90) days after the expiration of this Agreement. In no case, shall a final invoice be submitted after the date specified in Exhibit A.
- 24. Project Closeout.
 - A. For discretionary programs, such as 5310 Program, 5311(f) Subprogram and 5339 Program, any remaining balance/cost savings will be returned to STATE. For formula programs, such as 5311 Program (except for projects funded from 5311(f) Subprogram), CONTRACTOR agrees that once PROJECT is complete, any outstanding balance will be returned to the STATE for statewide redistribution or reallocation per FSTIP requirements, unless CONTRACTOR requests otherwise in writing at time of final invoice.
 - 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.
- 25. The parties agree that only the following section(s) of Exhibit B that have a mark ("X") opposite to the transportation services category (hereafter called the PROJECT) shall apply to this Agreement.

A. Operating Assistance (5310, 5311, 5311(f))

- 1. Operating assistance costs eligible for reimbursement under this Agreement are costs directly related to system operations and may include fuel, oil, salaries and fringe benefits for drivers, dispatchers, maintenance employees, mechanics and administrative staff whose duties are directly related to this PROJECT, and licenses.
- 2. The CONTRACTOR's scope of work shall be as described in Exhibit A of this Agreement and the CONTRACTOR's application for federal assistance, which is on file with the STATE.
- 3. The CONTRACTOR's geographic area that will be served by the transportation program shall be as described in Exhibit A.
- 4. The PROJECT period for which transit operational expenses are eligible for reimbursement under this Agreement is the Performance Period as specified in Exhibit A.
- 5. If the PROJECT includes capital costs of contracting, allowable expenses may include depreciation and interest on facilities and equipment, as well as other capital costs such as preventive maintenance. Under the capital cost of contracting, only privately-owned assets are eligible. Any capital assets that have any remaining federal interest in them, or items purchased with state or local government assistance shall not be capitalized, nor shall costs incurred delivering services ineligible for FTA assistance, such as charter or school bus service. Detailed information regarding the capital cost of contracting is available in the 5310 Circular.

B. Preventive Maintenance (5311, 5311(f))

- 1. 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.
- 2. For the purpose of carrying out the PROJECT, the labor, associated administrative, and incidental costs pursuant to this Agreement shall not exceed the estimated cost specified in Exhibit A.
- 3. The PROJECT period for which Preventive Maintenance expenses are eligible for reimbursement under this Agreement is the Performance Period as specified in Exhibit A.
- 4. 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 the percentage of total PROJECT costs as specified in Exhibit A, but not to exceed the amount encumbered in this Agreement.
- 5. 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.
- 6. If the PROJECT includes capital costs of contracting, allowable expenses may include depreciation and interest on facilities and equipment, as well as other capital costs such as preventive maintenance. Under the capital cost of contracting, only privately owned assets are eligible. Any capital assets that have any remaining federal interest in them, or items purchased with state or local government assistance shall not be capitalized, nor shall costs incurred delivering services ineligible for FTA assistance, such as charter or school bus service. Detailed information regarding the capital cost of contracting is available in the 5310 Circular.

C. Planning (5311, 5311(f))

- 1. The CONTRACTOR's scope of work shall be as described in Exhibit A.
- 2. Planning activities must be directed specifically at the needs of rural areas in the state and be included in the Planning Work Program. Eligible activities support efforts to:
- A. Develop transportation plans and programs,
- B. Plan, engineer, design and evaluate a public transportation project, and
- C. Conduct technical studies relating to public transportation.

D. Capital Project (Vehicle/Equipment) (5310)

- 1. Maximum vehicle funding limits shall be set by the STATE and shall apply to non-profit and public agencies without prejudice. Purchase order requirements are further detailed in Exhibit D. The Federal Share for all vehicle procurements shall be as shown in Exhibit A.
- 2. The CONTRACTOR's scope of work shall be as described in Exhibit A and the CONTRACTOR's application for federal assistance, which is on file with the STATE.
- 3. The CONTRACTOR agrees to operate the equipment funded and made available through the PROJECT within the service area as described in Exhibit A.
- 4. This is a 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).
- 5. The STATE shall order Vehicles for all Non-Profit Agencies from a STATE-approved Contract.
- 6. Public Agencies may purchase Vehicles using any one of the following three methods.
 - a. CONTRACTOR may request that the STATE purchase the PROJECT vehicle on its behalf, in which case the provisions regarding deposit of Local Share in Paragraph 8 shall apply.
 - b. CONTRACTOR may purchase vehicles directly from a State-approved Contract.
 - c. CONTRACTOR may purchase vehicles through its own procurement procedures. Public Agencies that procure vehicles in this way must receive prior written authorization from the STATE.
- 7. Whenever a Public Agency chooses to procure its own vehicles, whether from a State-approved Contract or through its own procurement procedures, the following provisions are applicable.
 - a. CONTRACTOR shall obtain STATE's approval of the procurement prior to ordering a vehicle.
 - b. CONTRACTOR shall purchase vehicles in full from the vendor.
 - c. Reimbursement requests from the CONTRACTOR for the Federal Share will be accepted and paid after the vehicle delivery is accepted by the STATE.
 - d. Such requests shall be submitted to the STATE through its BlackCat Grants system.
 - e. Any such Vehicle procurement shall:
 - i. Be consistent with the approved bid award listed in Exhibit A, Scope of Work.
 - ii. Designate that the CONTRACTOR is to be the sole registered owner of any vehicles(s) acquired.
 - iii. Designate Caltrans Division of Rail and Mass Transportation as the lien holder on the Department of Motor Vehicles Certificate of Title.
 - iv. Include a reference to the STATE's contract number assigned to this Agreement.
- 8. The following provisions regarding Local Share apply to any CONTRACTOR, whether a Public Agency or a Non-Profit Agency, for whom the STATE is purchasing a Vehicle.
 - a. CONTRACTOR shall deposit the Local Share amount and any amount designated as Additional Local Share in Exhibit A into the designated Bank of America account, unless Transportation Credits (Toll Credits) have been authorized by the STATE. No further billing or payment is required of the CONTRACTOR.
 - b. The Bank of America deposit shall be made within 90 days after signing this Agreement. Detailed instructions for making this deposit will be provided to the CONTRACTOR by the STATE upon execution of this Agreement.

- c. PROJECT equipment shall not be procured by the STATE, on behalf of the CONTRACTOR, until the deposit of the CONTRACTOR's local match has been verified by the STATE.
- d. In the event a balance due is owed to the CONTRACTOR for any unused portion of the local match, the CONTRACTOR shall request a refund from Caltrans in writing. Caltrans will initiate the refund process with Bank of America.
- e. Per the 5310 Program Circular, the Local Share may be derived from Federal programs that are eligible to be expended for transportation, other than DOT programs, or from Department of Transportation (DOT) Federal Lands Highway Program.
- 9. The CONTRACTOR shall be responsible for 100% of all costs which exceed the approved Federal Share amount specified in Exhibit A. In no event shall the STATE be obligated to contribute STATE funds toward the cost of the PROJECT.
- 10. Bid Proposal Approval for Other Equipment. No award shall be made without written approval from the STATE prior to purchase. The CONTRACTOR shall submit the following documents for approval to the STATE in advance of the proposed award.
 - a. Solicitation document detailing the specifications of the PROJECT for purchase.
 - b. Al least three (3) competitive like-kind bids using the same specifications indicated in the solicitation document.
 - c. A listing of all bids, proposals, or price quotations, which includes an analysis of all bids received detailing comparison information.
 - d. Disadvantaged Business Enterprise (DBE) Awards/Commitments form.
 - e. An explanation for the basis for selecting the proposed vendor(s) and for rejecting lower bids, if any. In the case of a single bid, sole source, or negotiated price contract, the CONTRACTOR shall include a statement certifying that the price is fair and reasonable and the justification for the single-bid determination per the Third-Party Contracting Circular.
- 11. Purchase of Other Equipment. After receiving written approval from the STATE, CONTRACTOR shall purchase approved PROJECT equipment within three months of Agreement execution, or, for purchasing on-board equipment, within three (3) months of Vehicle acceptance. If the equipment is not purchased within the designated timeframe, the CONTRACTOR may be subject to contract termination provisions described in Exhibit C. Upon receiving documentation outlined in Exhibit B and the Disadvantaged Business Enterprise (DBE) Actual Payment Form, the STATE will reimburse the CONTRACTOR the Federal Share in arrears.
- 12. Evidence of Insurance. Before delivery of the PROJECT vehicle(s) to the CONTRACTOR, the CONTRACTOR shall furnish to the STATE a certificate of insurance issued by a company licensed to write such insurance in California. Evidence of insurance shall also be provided to the STATE annually before the expiration date of the certificate. At any time that such evidence of insurance has not been provided, the STATE shall have the immediate right to take possession of the PROJECT equipment and to enter the property of the CONTRACTOR for this purpose.
- 13. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Exhibit C is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this Agreement and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting.

E. Capital Project (Vehicle/Equipment) (5311, 5311(f), 5339)

- 1. The CONTRACTOR's scope of work shall be as described in Exhibit A.
- 2. New PROJECTs for equipment or new vehicles shall not designated as "used" by Federal Trade Commission Agency 16 CFR Part 455.1(d)(2) or California Vehicle Code Section 100-680.
- 3. CONTRACTOR agrees to operate the equipment funded and made available through the PROJECT within the service area as described in Exhibit A.
- 4. 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 PROJECT costs. Reimbursements will only be allowed after execution of this Agreement.
- 5. If the PROJECT includes capital costs of contracting, allowable expenses may include depreciation and interest on facilities and equipment, as well as other capital costs such as preventive maintenance. Under the capital cost of contracting, only privately owned assets are eligible. Any capital assets that have any remaining federal interest in them, or items purchased with state or local government assistance shall not be capitalized, nor shall costs incurred delivering services ineligible for FTA assistance, such as charter or school bus service. Detailed information regarding the capital cost of contracting is available in the 5310 Circular.
- 6. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Exhibit C is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this Agreement and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting.

F. Capital Project (Real Estate Acquisition/Construction) (5311, 5311(f))

- 1. For Real Estate Acquisition, the CONTRACTOR must perform each of the procedures below pursuant to the Grant Management Circular, 2 CFR Part 200, 49 CFR Part 24 Subpart B, and 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.
- 2. 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 applicable sections regarding "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" in 2 CFR Part 200, the Third Party Contracts Circular, "Construction Management and Oversight" section of the 5311 Circular, the FTA "Projects and Construction Management Guidelines", and the FTA "Best Practices Procurement Manual".
- 3. The CONTRACTOR assures and certifies that the PROJECT complies with regulations of 23 CFR Part 771 regarding environmental impact and related procedures.
- 4. 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.
- 5. For the purpose of carrying out the PROJECT, the Real Estate Acquisition/Construction PROJECT is to be purchased and/or constructed, at costs not to exceed the estimated cost specified in Exhibit A.
- 6. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Exhibit C is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this Agreement and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting.

G. Mobility Management (5310)

- 1. The CONTRACTOR's Scope of Work is summarized in Exhibit A of this Agreement.
- 2. The CONTRACTOR agrees to complete the defined Mobility Management PROJECT described in the grant application, which is on file with the STATE and which is subject to all of the terms and conditions of this Agreement.
- 3. All Mobility Management projects require a Detailed Implementation Plan as a part of the project application. The Detailed Implementation Plan, as submitted, is hereby made a part of this PROJECT. The tasks described in the Detailed Implementation Plan shall be implemented by the CONTRACTOR pursuant to this Agreement at costs not to exceed the estimated cost specified in the Detailed Implementation Plan and in Exhibit A.
- 4. Invoices for all Mobility Management projects shall be itemized in accordance with the Detailed Implementation Plan and shall incorporate PROJECT progress, including dates of service, tasks partially or fully completed, and hours worked together with copies of the equipment vendor's invoices and the CONTRACTOR's purchase orders.
H. Transfer of Used Vehicle/Equipment (5310)

- 1. The STATE will evaluate potential transfer need for vehicle/equipment. The CONTRACTOR will submit an abbreviated Application 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; and
 - e. Signed Certifications and Assurances
- The CONTRACTOR's abbreviated Application, as attached, is incorporated herein and is made part of this Agreement. In the event the CONTRACTOR's abbreviated Application is in conflict with any terms or conditions of this Agreement, this Agreement shall supersede the CONTRACTOR's abbreviated Application.
- 3. The CONTRACTOR agrees to perform the PROJECT to provide transportation services primarily to seniors and persons with disabilities, including their incidental baggage, and to persons accompanying the seniors or persons with disabilities in accordance with the terms and conditions of this Agreement and the CONTRACTOR's abbreviated Application for Federal assistance which is on file with the STATE and which is hereby expressly incorporated into this Agreement.
- 4. The CONTRACTOR shall use the PROJECT at all times exclusively and in conformity with the project description for as long as the equipment is needed for the PROJECT.
- 5. Vehicles may not be transferred without prior written approval from STATE.
- 6. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Exhibit C is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this Agreement and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting.

I. Transfer of Used Vehicle/Equipment (5311, 5311(f), 5339)

- 1. The CONTRACTOR shall use the PROJECT equipment at all times exclusively and in conformity with the Project Scope of Work in Exhibit A and the Project Description and Justification for Funding Request (Attachment 1 to this Agreement).
- 2. Vehicles may not be transferred without prior written approval from STATE.
- 3. The PROJECT equipment as described in Exhibit A and Attachment 1 to this Agreement was transferred from:

SA<<Original Number here>> to <<Organization Name here>>.

- 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. Existing Transportation Services (current fleet)
 - c. Proposed Transportation Services
 - d. Signed Certifications and Assurances
 - e. Board Resolutions of Both Parties participating in the transfer
- 5. The STATE holds a lien interest in the PROJECT until the end of the PROJECT's Useful Life as shown in Exhibit C is reached and the STATE has received and approved a request from the CONTRACTOR to release its interest in the PROJECT. The STATE's lien interest shall survive this Agreement and the CONTRACTOR shall be responsible for using the PROJECT in compliance with state, federal and applicable Program requirements stated herein, including reporting.

EXHIBIT C GENERAL TERMS AND CONDITIONS

 <u>Subrecipient</u>. For the purpose of this Agreement, the CONTRACTOR is the Subrecipient as referenced in the Federal Transportation Funding Law and the applicable Program Circular. As a 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 not limited to, the USDOT FTA Master Agreement and the FTA Circular for the 5310 Program, the 5311 Program and/or the 5339 Program.

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 Federal Transportation Funding Law.
- B. It is mutually agreed that if the State Budget Act or the Federal Transportation Funding Law 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 CONTRACTOR or to furnish any other considerations under this Agreement and 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 State Budget Act or the Federal Transportation Funding Law 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 amended Agreement to CONTRACTOR that reflects the reduced amount.

3. Prompt Payment and Return of Retainage.

- A. All payments to the CONTRACTOR shall be made in accordance with California Government Code (GC), Chapter 4.5, commencing with Section 927, which is known as the California Prompt Payment Act. If payment is not made within the 45 calendar-day limit stipulated by the California Prompt Payment Act, interest penalties may be payable to the CONTRACTOR.
- B. Unless the approved project is for Construction, the CONTRACTOR shall not hold retainage (withhold retention) from any subcontractor. The STATE shall not hold retainage (i.e. withhold retention) from any CONTRACTOR.
- C. If a dispute arises regarding Construction projects only, the CONTRACTOR may exercise its rights under California Public Contract Code (PCC) Sections 10262 and 10262.5 or California Business and Professions Code (BPC) Section 7108.5, as applicable.
- D. The CONTRACTOR must pay third-party contractors within 7 days of receipt of each undisputed progress payment from the STATE, unless the PROJECT is for Construction. In the case of a Construction project only, the CONTRACTOR is required to pay its subcontractors for satisfactory performance of work related to this Agreement no later than 30 days after the CONTRACTOR's receipt of payment for that work from the STATE. In addition, the CONTRACTOR is required to return any retainage (retention) payment to any subcontractor within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.

4. 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 shall not be authorized until the expenditure of federal funds has been authorized by the FTA for a specific Federal fiscal year or a pre-award expenditure authority approved by the STATE. The CONTRACTOR may not commence performance until federal authorization has been obtained.
- C. It is mutually understood between the parties that this Agreement, for the mutual benefit of both parties, may have been written before ascertaining the availability of congressional or legislative appropriation of funds 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 that the project has been programmed and is in an approved FSTIP has been received by the STATE.
- 5. <u>Enforcement/Remedies for Non-Compliance</u>. 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 any other remedies that may be legally available.
- 6. <u>Timeliness</u>. Time is of the essence in this Agreement. CONTRACTOR shall return the signed Agreement to the STATE 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 may be withdrawn and cancelled at the discretion of the STATE.
- 7. <u>Amendment</u>. 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. 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 Program Manager at least two months before the Agreement Expiration Date shown in Exhibit A. If an Amendment is issued by STATE, the Amendment shall be signed and returned by the CONTRACTOR within 90 calendar days of issuance. If CONTRACTOR does not sign and return the Amendment within 90 days of issuance, the PROJECT may be either withdrawn or cancelled at the discretion of the STATE.

- 8. <u>No Oral Understanding or Agreement</u>. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.
- 9. <u>Assignment</u>. 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.
- 10. <u>Independent Contractor</u>. 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.
- 11. <u>Antitrust Claims</u>. 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 California Government Code (GC) Sections set out below.
 - A. GC Sections 4550 through 4554 regarding 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 BPC Section 16750(c).
 - 2. GC Section 4550 defines a "public purchasing body" as the STATE or the subdivision or agency making a public purchase.
 - 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 USC Section 15) or under the Cartwright Act (BCP Chapter 2 (commencing with Section 16700) of Part 2 of Division 7, arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Per GC Section 4552, such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.
 - C. Per GC Section 4553., 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 awarding body or public purchasing body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the awarding body or public purchasing body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
 - 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 either 1) the assignee has not been injured thereby, or 2) the assignee declines to file a court action for the cause of action, per GC Section 4554.
- 12. <u>Child Support Compliance Act</u>. For any Agreement in excess of \$100,000, the CONTRACTOR acknowledges in accordance with PCC Section 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 California 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.
- 12. <u>Unenforceable Provision</u>. 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.
- 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 the California Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
- 14. <u>State Management Plan (SMP)</u>. The STATE is designated by the Governor to administer the FTA Federal Transit grant programs in California. The implementation and administration of the FTA programs are outlined in the SMP. Should there be a discrepancy between the SMP and this Agreement, the Agreement shall govern.
- 15. <u>Annual Certification and Assurances.</u> 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.
- 16. <u>Buy America</u>. The CONTRACTOR shall comply with the Buy America requirements of 49 USC Section 5323(j) 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 Section 5323(j)(2)(c) and 49 CFR Part 661.11.

17. 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 USC 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 49 USC Section 40118, which may be cited as the "Fly America Act" "Use of United States Flag Air Carriers," and 41 CFR Parts 301-10.131 through 301-10.143.
- C. Project Travel. In accordance with 49 USC Section 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.
- 18. <u>Accounting Records</u>. 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.

- 19. <u>Vehicle Operator Licensing</u>. The CONTRACTOR is required to comply with all applicable requirements of the Federal Motor Carrier Safety Administration (FMCSA) 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. <u>Audit Requirements</u>. The CONTRACTOR shall be responsible for meeting the audit requirements of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 1201. 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 2 CFR Part 200 is an allowable charge to this PROJECT.
- 21. <u>Record Keeping</u>. 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 subcontracts.
- 22. <u>Examination of Records</u>. The STATE, the STATE'S Office of Audits and Investigations, 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. Copies thereof shall be furnished by CONTRACTOR upon request. 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. The CONTRACTOR shall include a clause to this effect in every subcontract entered into relative to the PROJECT.
- 23. <u>Examination of Accounting</u>. 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.
- 24. <u>Reporting Forms</u>. The CONTRACTOR shall furnish STATE with any additional reports or data that may be required by FTA or other federal agencies. Such information 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 USC 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 identified in the "U.S. General Services Administration's (U.S. GSA) System for Award Management (<u>https://www.sam.gov</u>) 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 includes 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. In accordance with 2 CFR Part 1200 and OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180, the CONTRACTOR agrees to obtain a debarment and suspension certification from each prospective subrecipient, third-party contractor or subcontractor containing information about the debarment and suspension status and other specific information of that contractor and its principals before award of a third-party contract or subcontract at any tier of \$25,000 or more.
- 26. <u>Compliance with Federal Statutes</u>. 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 49 USC Chapter 53, including, but not limited to the following:
 - A. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 USC Subsection 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 USC Subsection 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C Subsection 12132, and federal transit law at 49 USC Section 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age or disability. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations FTA may issue.
 - B. Equal Employment Opportunity (EEO). The following equal employment opportunity requirements apply to the underlying contract:
 - Race, Color, Creed, National Origin, Religion, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC Subsection 2000e, and federal transit laws at 49 USC Section 5332, the CONTRACTOR agrees to comply with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Part 60 *et seq.*, (which implement Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC Subsection 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, creed, national origin, or sex. 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.
 - Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC Section 623 and federal transit law at 49 USC Section 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.
 - 3. Disability. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC Section 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 American with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
 - C. The CONTRACTOR agrees to include the foregoing requirements in each solicitation for subcontract financed in whole or in part with Federal assistance provided by FTA and agrees to notify the subcontractor of their obligations under this Agreement and the Regulations relative to Civil Rights.

- D. In accordance with 49 CFR Part 21 and as described in the Title VI Circular, as it may be updated or amended, and the California Department of Transportation Title VI Program Plan, the CONTRACTOR shall comply with and ensure that each third-party contractor at any tier of the PROJECT also complies with the following reporting requirements:
 - 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.
- E. The following requirements only apply to those providers of public transportation that both operate fixed route service and demand response service. The following requirements do not apply to those providers of public transportation that only operate demand response service. Demand response includes general public paratransit, Americans with Disabilities Act complementary paratransit, and non-profit organizations participating in the 5310 Program and serving only their own clientele, which may be referred to as closed-door service. The CONTRACTOR shall comply with the following requirements and ensure the compliance of each third-party contractor at any tier of the PROJECT:
 - 1. Service standards
 - a. Vehicle load for each mode
 - b. Vehicle headway for each mode
 - c. On-time performance for each mode
 - d. Service available for each mode
 - 2. Service policies
 - a. Transit Amenities for each mode
 - b. Vehicle Assignment for each mode
- F. Every three years, on a date determined by the STATE, the CONTRACTOR shall submit the following information to the STATE as part of their Title VI Program per Chapter III of the Title VI Circular.
 - 1. Title VI Notice to the Public, including a list of locations where the notice is posted
 - 2. Title VI Complaint Procedures instructing the public how to file a Title VI discrimination complaint
 - 3. Title VI Complaint Form used by the CONTRACTOR
 - 4. List of transit-related Title VI investigations, complaints, and lawsuits against the CONTRACTOR
 - 5. Public Participation Plan, including information about outreach methods to engage minority and limited English proficient (LEP) populations, as well as a summary of outreach efforts made by the CONTRACTOR since its last Title VI submission
 - 6. Language Assistance Plan for providing language assistance to its LEP population as required by the Title VI Circular and USDOT LEP Guidance
 - 7. A table depicting the membership of non-elected committees and councils, the membership of which is selected by the recipient, broken down by race, and a description of the process the agency uses to encourage the participation of minorities on such committees
 - 8. A Title VI equity analysis if the recipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc.
 - 9. A copy of board meeting minutes, resolution, or other appropriate documentation showing the board of directors or appropriate governing entity or official(s) responsible for policy decisions, reviewing and approving the Title VI Program.

- 10. Additional information as specified in Chapters IV, V, and VI of the Title VI Circular depending on whether the CONTRACTOR is a transit provider, nonprofit or public agency.
- G. Sanctions for Noncompliance. In the event of the CONTRACTOR's noncompliance with any provision of Civil Rights requirement in this Agreement, the STATE shall impose such contract sanctions as it or the FTA 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.
- H. Incorporation of Provisions. The CONTRACTOR shall include the provisions of the foregoing Paragraphs A through E in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The CONTRACTOR shall 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. 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. 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 (DBE). The CONTRACTOR agrees to:
 - A. Comply with 49 CFR Part 26 "Participation by Disadvantaged Enterprises in Department of Transportation Financial Assistance Programs," and shall cooperate with STATE with regard to maximum utilization of DBEs, using its best efforts to ensure that DBEs shall have the maximum opportunity to compete for sub contractual work under this Agreement.
 - B. Prior to beginning PROJECT work, the CONTRACTOR shall complete and sign a DBE Implementation Agreement form to be provided by the STATE. The completed DBE Implementation Agreement must be returned to the STATE no later than the date that this Agreement is executed.
 - C. Report twice annually on DBE participation in CONTRACTOR's contracting opportunities; commitments, awards, and actual payments.
 - D. In accordance with 49 CFR Part 26.53(f)(1)(i), the CONTRACTOR shall not terminate a DBE subcontractor without prior written approval of the STATE. A CONTRACTOR that terminates a DBE subcontractor must make a good faith effort to find a replacement DBE subcontractor to perform at least the same amount of work under the contract to meet the contract goal established for the work. The good faith effort should be documented and submitted to the STATE within a reasonable time after obtaining approval by the STATE to terminate an existing DBE as required by 49 CFR Part 26.53(g).
 - E. CONTRACTOR shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any federally-assisted contract or in the administration of its DBE program. The CONTRACTOR'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 to the recipient of its failure to carry out its approved program, the STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC Section 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC Section 3801 *et seq.*).
 - F. The CONTRACTOR and their subcontractors shall make available, upon request of the STATE, a copy of all DBE subcontracts. The CONTRACTOR must ensure its third-party contractors and subcontractor also comply with these requirements.
- 28. <u>Section 504 and Americans with Disabilities Act Program Requirements (ADA)</u>. The CONTRACTOR will comply with 49 CFR Parts 27, 37 and 38, which implement the ADA and Section 504 of the Rehabilitation Act

of 1973 (29 USC Section 794), as amended. The CONTRACTOR must ensure its third-party contractors operating public transportation service comply with these requirements.

- 29. <u>Special Section 5333(b) Warranty for 5311 Program and 5339 Program</u>. When the PROJECT includes the acquisition, improvement, or operation of public transportation, the CONTRACTOR shall comply with applicable transit employee protective requirements as specified by 49 USC Section 5333(b) (formerly Section 13(c) of the Urban Mass Transportation Act) as executed by the Secretary of Labor and the Secretary of Transportation. When applicable, those terms and conditions are described in Exhibit E of this Agreement. The CONTRACTOR agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by the FTA.
- 30. <u>Contract Work Hours and Safety Standards</u>. The CONTRACTOR agrees to comply with the following requirement for Construction contracts and, if applicable, non-construction project contracts that employ laborers or mechanics on a public work:
 - A. The CONTRACTOR shall comply with Section 107 of the Contract Work Hours and Safety Standards Act, 40 USC Section 3704 and 29 CFR Part 1926, "Safety and Health Regulations for Construction." The CONTRACTOR and subcontractor 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.
 - B. No CONTRACTOR or subcontractor contracting for any part of the 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 (40) hours in such workweek unless such laborer or mechanic receives compensation at the rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- 31. <u>Public Lands</u>. 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 USC Section 303.
- 32. <u>Energy Conservation</u>. 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, USC Section 6321 *et seq*.
- 33. <u>Receipt of Commission</u>. 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.
- 34. Conflict of Interest.
 - A. In accordance with 41 USC Section 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's officials and employees shall also avoid actions that result in or create the appearance of:
 - 1. Using an official position for private gain;
 - 2. Giving preferential treatment to any particular person;
 - 3. Losing independence or impartiality; and/or
 - 4. Adversely affecting 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 at any time during the 12-month period prior to that employee's 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, whose rates are fixed or controlled by a governmental agency.

35. Lobbying.

- A. if the CONTRACTOR'S PROJECT exceeds \$100,000, the CONTRACTOR agrees that it will not use federal assistance funds to support lobbying, in accordance with 31 USC Section 1352 and 49 CFR Part 20, "New Restrictions on Lobbying". FTA will not make any federal assistance available to the CONTRACTOR until STATE has received the CONTRACTOR's certification that the CONTRACTOR has not and will not use federally-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 other federal award from which funding for the PROJECT is originally derived.
- B. If any funds other than federally-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," to the STATE.

C. The CONTRACTOR shall require that the following certification language be included in the award documents for all subawards 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 31 USC Section 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."

36. 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 USC Section 3801 *et seq*. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this PROJECT. Upon execution of an underlying agreement, 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 agreement 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 USC Section 5307, the Federal Government reserves the right to impose the penalties of 18 USC Section 1001 and 49 USC Section 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, whether partly or wholly financed with federal assistance provided by FTA. It is further agreed that these clauses shall not be modified, except to identify the subcontractor who is subject to the provisions.
- 37. <u>Drug-Free Workplace</u>. 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 GC 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 USC 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug use in Transit Operations," 49 CFR Part 655.
- 38. <u>Charter Service Operations</u>. The CONTRACTOR agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provide that recipients and subrecipients of FTA assistance are prohibited from providing charter

service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions listed at 49 CFR Part 604 Subpart B. Any charter service provided under one of the exceptions must be incidental, meaning it must not interfere with or detract from the provision of mass transportation. The CONTRACTOR assures and certifies that the revenues generated by its incidental charter bus operations (if any) are, and shall remain, equal to or greater than the cost (including depreciation on Federally-assisted equipment) of providing the service. The CONTRACTOR understands that the requirements of 49 CFR Part 604 will apply to any charter service provided, the definitions in 49 CFR Part 604 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. <u>School Bus Operations</u>. Pursuant to 49 USC Section 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 USC Section 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. 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. <u>Use of \$1 Coins</u>. As applicable, and to comply with Section 104 of the Presidential \$1 Coin Act of 2006, 31 USC Section 5112(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. <u>Protection of Animals</u>. The CONTRACTOR must ensure that all third-party contractors providing services involving the use of animals must comply with the Animal Welfare Act, 7 USC Section 2131 *et seq*. and Department of Agriculture regulations, "Animal Welfare", 9 CFR Subchapter A, Parts 1,2,3, and 4.

42. 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.
- B. Termination for Default.
 - 1. 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 the breach or default or any of the terms, covenants, or conditions of this Agreement to the STATE's satisfaction, the STATE shall have the right to terminate the Agreement without any further obligation to the CONTRACTOR. Any such

termination for default shall not preclude the STATE from also pursuing all available remedies against the CONTRACTOR.

- 2. 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 of this Agreement, 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 the CONTRACTOR fails to remedy to the STATE'S satisfaction the breach or default of 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 preclude the STATE from 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.
- 3. CONTRACTOR shall remit to the STATE the proportional amount of current market value that exceeds \$5,000 per unit at the time of disposition of PROJECT equipment, which shall be based on the Federal Share percentage of 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.
- 4. CONTRACTOR shall 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.
- 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, and after determining a new delivery of performance schedule, the STATE 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. <u>Disputes</u>. The STATE and the CONTRACTOR shall deal in good faith and attempt to resolve potential disputes arising under this Agreement informally. If the dispute persists, the CONTRACTOR shall submit a written demand for a decision regarding the dispute to the STATE's authorized representative for this Agreement or his or her designee. The STATE's authorized 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 authorized 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's authorized representative's original written decision 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.

- A. 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 USC 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.
- B. For all procurements of commodities, 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 USC Section 5325(a), applicable third-party procurement requirements of 49 USC Chapter 53, 49 USC Section 5325(b) to award a third-party contracting using a competitive procurement process, and other procurement requirements of Federal laws in effect now or as amended to the extent applicable. The CONTRACTOR shall prepare a bid or proposal package, including equipment and material specifications or a scope of work.
- C. Purchases over the federal micro-purchase threshold, or similar local threshold, which result in a thirdparty contract without an ongoing period of performance, shall be procured through a purchase order. Purchase orders shall contain all applicable federal third-party contract clauses. Upon request for reimbursement, the CONTRACTOR shall submit a copy of the purchase order to the STATE.
- D. The CONTRACTOR agrees that it may not use FTA assistance to support its procurements unless there is satisfactory compliance with federal laws and regulations. In accordance with applicable USDOT third-party procurement regulations at 2 CFR Part 1201 and the provisions of the Third-Party Contracting Circular, including, but not limited to, the following provisions apply to all procurements:
 - 1. To state clearly that the final contract award to any bidder or proposer requires prior written approval by the STATE and that procurement solicitations are consistent with the PROJECT description identified in Exhibit A.
 - 2. To comply with applicable Federal laws and regulations including, but not limited to, Federal transit laws at 49 USC 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.
 - 3. For all contracts and subcontracts financed with Federal assistance, to comply with cargo preference requirements of 46 USC Section 1241 and 46 CFR Part 381 when contracts involve equipment, materials, or commodities which may be transported by ocean vessels.
 - 4. In accordance with 49 USC Section 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.
 - 5. To comply with 49 USC Section 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.
 - 6. To comply with the requirements of 49 USC Section 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, and any revision thereto.
 - 7. To comply with the requirements of 49 USC Section 5318(c) and (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.
 - 8. To require each bidder to certify that it has complied with 49 CFR Part 26, which requires each transit vehicle manufacturer to submit a certification that it has complied with FTA's DBE requirements.

- 9. In subcontracts exceeding \$100,000, to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC Section 7401 *et seq*. and federal Clean Water Act, as amended, 33 USC Section 1251 *et seq*. CONTRACTOR agrees to report and require each third-party contractor or subcontractor at any tier of the PROJECT 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.
- 10. To comply with the mandatory energy standards and policies of the STATE's energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 USC Section 6201 *et seq.*, and perform an energy assessment for any building constructed, reconstructed or modified with federal assistance.
- 11. 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 of 1975 (Public Law 94–163, 89 Statute 871, enacted December 22, 1975).
- 12. To the extent applicable, agrees to conform to the National Intelligent Transportation System (ITS) Architecture and Standards as required by 23 USC Section 517(d), 23 USC Section 512 note, and 23 CFR Parts 655 and 940, and follow the provisions of the FTA Notice, "FTA National ITS Architecture Policy on Transit projects," 66 Fed. Reg. 1455 *et seq.*, and any other implementing directives FTA may issue at a later date, except to the extent the FTA determines otherwise in writing. Third-party contracts involving ITS must comply with Federal requirements.
- 13. 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.
- 14. For PROJECTs designated as experimental, development, or research work, the CONTRACTOR must comply with patent and rights in data requirements in accordance with 37 CFR Part 401. The STATE reserves a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes and reserves the right to grant authority to others. The CONTRACTOR also agrees to include these requirements in each subcontract funded under the PROJECT.
- 15. 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.
- 16. CONTRACTOR must comply with 2 CFR Part 225 or 2 CFR Part 230, as applicable, in determining whether PROJECT costs are allowable or unallowable. Where applicable, CONTRACTOR must comply with cost principles of FAR Chapter 1 Subpart 31.2.
- 17. CONTRACTOR must have written protest procedures describing its pre-bid/pre-proposal, post proposal, and post-award procedures. CONTRACTOR shall disclose the CONTRACTOR's protest procedures and the STATE's appeal process to all bidders. 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. An appeal to the STATE must be filed no more than ten (10) calendar days from the date of the CONTRACTOR's protest decision, as evidenced by postmarked date. Reviews of protests by the STATE will be limited to:
 - a. CONTRACTOR's failure to have or follow its own protest procedures.
 - b. CONTRACTOR's failure to review a complaint or protest.
 - c. Violations of federal or state law or regulation.

- 18. Construction or Facility Improvement Contracts, including those issued to Third-Parties.
 - a. Davis Bacon Act (contracts over \$2,000.00). In accordance with 49 USC Section 5333(a) and the implementing regulations of 29 CFR Part 5, the CONTRACTOR shall comply with the employee protection requirements of the Davis-Bacon Act for construction activities exceeding \$2,000.00 performed in connection with the PROJECT. The Davis-Bacon Act applies to contracts in excess of \$2,000.00 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 U.S. Secretary of Labor.
 - b. Bonding. For contracts or subagreements exceeding \$100,000.00, the following bonding requirements must be included:
 - i. Bid guarantee from each CONTRACTOR equivalent to five (5%) percent of the bid price
 - ii. Performance bond on the part of the CONTRACTOR for 100 percent (100%) of the contract price
 - iii. Payment bond in the amount of either (1) 50% of the contract price if the contract price is not more than \$1 million dollars, or (2) 40% of the contract price if the contract price is more than \$1 million
 - c. Copeland Anti-Kickback Act. For contracts or subagreements exceeding \$100,000.00 and in accordance with 18 USC Section 874 Copeland "Anti-Kickback" Act, 29 CFR Part 3 "Contractors and subcontractors on Public Building or Public Work Financed in part by Loans or Grants from the United States," the CONTRACTOR and subcontractor are prohibited from requiring, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled.
- 19. Seismic Safety. The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all work performed under this contract, including work performed by a subagreement, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the PROJECT.
- 45. <u>Bid or Proposal and Third-Party Contract Award</u>. All procurement documents including, but not limited to, oral or written quotations, purchase orders, bid or proposal solicitation documents, CONTRACTOR's proposed third-party vendor selection documents, request for non-competitive bid, and use of assigned options (i.e. piggybacking) 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. No exercise of optional periods of performance (Option Years) shall be made without written approval from the STATE. The CONTRACTOR, or procurement agent acting on its behalf, shall prepare the bid or proposal documents, solicit and receive competitive bids or proposals, evaluate the bids or proposals received, and select the lowest price compliant bid for award.
 - A. The CONTRACTOR, or procurement agent acting on CONTRACTOR's behalf, shall forward to the STATE, at least twenty (20) business days prior to the release of the bid solicitation, a copy of the bid solicitation document, proposed third-party contract, independent cost estimate, and bidders list.
 - B. At least twenty (20) business days prior to contract award, the CONTRACTOR, or procurement agent acting on CONTRACTOR's behalf, shall forward to STATE a copy of the proposed third-party contract, verification of the incorporation of FTA-required third-party contract clauses, proof that the bid or proposal was publically advertised, list of all bids, proposals, or price quotations received, a copy of the selected bid or proposal, copy of the bids or proposals where prices were 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 explanation shall include a statement by the CONTRACTOR that the price is fair and reasonable and that the basis for that determination is consistent with guidance in the Third-Party Contracting Circular.

- C. All third-party contracts, subcontracts and contract modifications, and exercising of Option Years funded under PROJECT shall include essential elements including, but not restricted to, parties, price or rate of compensation, scope of work, contract timeline, contract termination and other legal considerations.
- D. CONTRACTOR shall perform a cost or price analysis in connection with every procurement action funded under the PROJECT, including contract modifications and exercise of Option Years. Before receiving bids or proposals, CONTRACTOR must make independent cost estimates to determine price reasonableness.
- 46. <u>FTA Regulations, Policies, Procedures and Directives</u>. The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directive, including, without limitation, those listed directly or by reference in the USDOT FTA Master Agreement between the STATE and FTA, as they may be amended or revised 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. <u>Incorporation of FTA Terms</u>. The provisions in this Agreement include, in part, certain Standard Terms and Conditions required by the USDOT, whether or not expressly set forth in the Agreement. All contractual provisions required by the USDOT, as set forth in the Third-Party Contracting Circular are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any STATE requests which would cause the STATE to be in violation of these Standard Terms and Conditions.
- 48. <u>Amendments to Federal, State and Local Laws, Regulations and Directives</u>. 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.
- 49. <u>Property Maintenance and Inspection</u>. 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. The CONTRACTOR shall notify the STATE, within ten (10) working days of any loss or damage, including accident, fire, vandalism, theft, to the PROJECT.
- 50. <u>Useful Life Standard</u>. In accordance with the Grant Management Circular and consistent with the SMP, the following Useful Life Standard (ULS) shall determine when PROJECT property will no longer be subject to monitoring and reporting requirements. CONTRACTOR will be released from the monitoring and reporting requirements after the STATE has approved CONTRACTOR's request for disposition of PROJECT property through the BlackCat Grants system. 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 or other equipment was put into

active service, not the actual model year of the vehicle. These criteria are subject to review by the 5310, 5311, or 5339 Program Chief, as applicable, if either factor is less than the value shown herein.

TYPE OF EQUIPMENT	USEFUL LIFE STANDARD
Minivans	4 years or 100,000 miles
Small, Medium, Large Bus	5 years or 150,000 miles
Larger Bus	7 years or 200,000 miles
Largest Bus (5311/5339 Only)	10 years or 350,000 miles
Computer Equipment	3 years
Asphalt Paving, Parking Lot (5311 Only)	10 years
Bus Shelters (5311 Only)	10 years
Building Structures (5311 Only)	40 years
Bus Lift	15 years
Bus Stop Signs (5311 Only)	5 years
Communication Equipment	3 years
Communication Equipment on Vehicles	Same as ULS associated with Vehicle
Farebox/Ticket Machine	10 years
Surveillance Equipment	3 years

51. Property Ownership and Relinquishment.

- A. At all times while PROJECT property or equipment is in the possession or control of the CONTRACTOR, the CONTRACTOR shall be the registered owner and STATE shall be the legal owner (lien holder). Whenever any PROJECT property or equipment is withdrawn from the PROJECT for any reason, the CONTRACTOR shall immediately notify the STATE. The CONTRACTOR shall not transfer ownership of PROJECT property or equipment at any time while this Agreement is in effect. As lien holder, the STATE may take possession of PROJECT property or equipment due to 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 PROJECT property or equipment is released by the STATE to the CONTRACTOR or other appropriate party.
- B. Whenever any PROJECT property or equipment is withdrawn from the service for any reason prior to meeting the ULS, and at the discretion of the STATE, the CONTRACTOR shall be required to do one of the following:
 - 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 either 1) the unamortized value of the remaining service life per unit based on a straight-line depreciation of the original purchase price or 2) the Federal Share of the sale 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.
- 52. <u>Worker's Compensation</u>. 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.
- 53. 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 may be increased by the STATE at any time upon thirty (30) day 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 immediate right to take possession of the PROJECT equipment and to enter the property of the CONTRACTOR for this purpose.
 - I. The CONTRACTOR shall provide the STATE at least thirty (30) day 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 per occurrence (combined single limit), whether the property of one or more claimants, in an amount not less than one million five hundred thousand dollars (\$1,500,000) for property damage liability in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) 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 per occurrence (combined single limit) in an amount not less than one million five hundred thousand dollars (\$1,500,000) in respect to vehicles with seating capacity of fifteen (15) or less, or five million dollars (\$5,000,000) 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:
 - Property Damage: The CONTRACTOR shall place property damage per occurrence (combined single limit), whether the property of one or more claimants, in an amount not less than one million dollars (\$1,000,000) for property damage liability in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) for property damage liability in respect to vehicles with seating capacity of sixteen (16) or more.
 - 2. Bodily Injury: The CONTRACTOR shall place bodily injury per occurrence (combined single limit) in an amount not less than one million dollars (\$1,000,000in respect to vehicles with seating capacity of fifteen (15) or less, or one million five hundred thousand dollars (\$1,500,000) 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).
- 54. <u>Excise Tax</u>. 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.

55. 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 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 the STATE or to 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, Memoranda of Understanding, Intergovernmental Agreements, 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.
- 56. <u>Narrowband Migration</u>. 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.
- 57. <u>Indemnification</u>. 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 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, employees, and representatives under this Agreement.

EXHIBIT D SPECIAL TERMS AND CONDITIONS

- 1. <u>Purchase Order</u>. 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. Each purchase order shall be consistent with the approved bid award listed in Exhibit A, be consistent with Billing and Payment instructions listed in Exhibit B, and include a reference to the STATE's contract number as assigned to this Agreement.
- 2. <u>Disposition</u>. The disposition of the PROJECT and any PROJECT-related equipment or property shall be made in accordance with 49 USC Chapter 53, the applicable Program Circular, and the SMP. Disposition requests shall be submitted through the BlackCat Grants system.
- 3. <u>Release of Title</u>. As long as STATE is lien holder of the vehicle, CONTRACTOR is obligated to provide required periodic reporting described in Exhibit D, even if the ULS for the PROJECT has been exceeded. When the ULS has been achieved, the STATE shall remain the lien holder for vehicles or equipment until all of the steps in the disposition process described in the preceding regarding Disposition have been completed. Upon completion of the disposition process, the STATE shall make a determination as to whether the ULS has been achieved. Useful Life requirements are enumerated in Exhibit C of this Agreement. The STATE has the discretion to base its determination upon either PROJECT mileage, PROJECT age or a combination of both. Upon determining that the ULS has been achieved, the STATE shall release title to the CONTRACTOR. Upon release of title to CONTRACTOR, the CONTRACTOR shall keep the PROJECT or alternatively, the proceeds from the sale of the PROJECT, in its public transportation program.
- 4. <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 139(j).
- 5. <u>Reporting Requirements</u>. 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 and may be grounds for PROJECT termination):
 - A. 5311Program and 5339 Program: 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.
 - B. 5311 Program Operating Assistance projects: Drug and Alcohol Management Information System (MIS) Reporting. CONTRACTOR shall submit their Drug and Alcohol MIS data annually, as required by FTA.
 - C. Milestone Reporting.
 - Bi-Annual Reporting (Capital and Mobility Management Projects). The CONTRACTOR shall submit a Bi-Annual Report of vehicle/equipment usage or its progress of the mobility management activities within thirty (30) calendar days after the close of each federal reporting period. The federal reporting periods are: 1) October 1 through March 31; and 2) April 1 through September 30. Bi-Annual reports are due no later than April 30, and October 30 of each calendar year.
 - 2. Annual Reporting (Operating Assistance Projects). The CONTRACTOR shall submit an annual report of progress made on the PROJECT by no later than thirty (30) days after the close of the annual federal reporting period of October 1 through September 30. Annual reports are due no later than October 30.

- D. Federal Funding Accountability and Transparency Act (FFATA) Reporting. CONTRACTOR on its own behalf and for any of its Subcontractors shall comply with the requirements of FFATA, as required by the FFATA Public Law 109-282, 31 U.S. C. 6101. If requested to do so by STATE, CONTRACTOR shall submit required information to allow STATE to fulfill its reporting requirements under FFATA.
- E. Final Reporting. The CONTRACTOR shall submit a final PROJECT report documenting final PROJECT costs. This report shall be on a form to be provided by the STATE. For 5310 Program, the report shall include narrative on and PROJECT outcomes and how program performance measures have been met by this PROJECT for the target group as referenced in the CONTRACTOR's application.
- 6. <u>Liability Insurance</u>. In addition to Exhibit C "Insurance", the following provisions shall also apply:
 - 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.
 - E. 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. 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 liability 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 insured 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 insured 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.
 - F. 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. 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. \$5,000,000 umbrella or excess liability. For PROJECTs over \$25,000,000 only, an additional \$10,000,000 umbrella or excess liability (for a total of \$15,000,000). Umbrella or excess policy shall include products liability completed operations coverage and may be subject to \$5,000,000 or \$15,000,000 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 insured 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 insured 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.

<u>EXHIBIT E</u> 49 USC SECTION 5333(b) SPECIAL WARRANTY FOR 5311 PROGRAM AND 5339 PROGRAM

- 1. This PROJECT is subject to 49 USC Section 5333(b) (formerly Section 13(c)) "Documentation and Agreement by Subrecipient to Terms and Conditions of 49 USC Section 5333(b) Special Warranty" (Special Warranty).
- 2. Name and Address of Subrecipient:

Agency Name:	< <agency< th=""><th>Name her</th><th>e>></th><th></th></agency<>	Name her	e>>	
Agency Address:	< <agency address="" here="" street="">></agency>			
	< <city>>,</city>	< <state>></state>	< <zip code=""></zip>	>>

- 3. PROJECT Description for FFY 2016: << Project Description here>>
- 4. County and Service Area of PROJECT: <Project area here>>
- 5. List of all current operators of public transportation (including CONTRACTOR) and corresponding labor organizations (if applicable) representing the employees of the providers in the above service area that are eligible or potentially eligible recipients of federal 5311 Program or 5339 Program funding assistance even if they are not currently recipients, human service agency providers that provide transportation to the general public, and taxi operators providing shared-ride transportation on a regular and continuing basis:

Public Transportation Operators <<Other Agencies here>> <<Additional Lines as needed>> Labor Organizations (or N/A) <<<Union information here>>

- 6. The 5311 Program or 5339 Program PROJECT(s) subject to this Agreement are subject to the Special Warranty, including the National Model Agreement which is a part thereof. The Special Warranty refers to the CONTRACTOR as a subrecipient (Subrecipient). The Subrecipient shall be fully knowledgeable of the terms and conditions of the Special Warranty and the National Model Agreement and agrees to comply with those same terms and conditions for the duration of the 5311 Program or 5339 Program PROJECT. The text of the National Model Agreement is available from the United States Department of Labor. Furthermore, these terms and conditions will be a part of any and all agreements and contracts between or among the Federal Government, the State of California, and the Subrecipient, entered into with respect to the subject Section 5311 or Section 5339 PROJECT.
- 7. For the purposes of the Special Warranty for the 5311 Program or 5339 Program, the State of California is neither the legally nor financially responsible party under the Special Warranty, and the State assumes no special obligations under the Special Warranty that are not otherwise part of its normal obligations as a grant administering agency.

PART IV: DBE Certification

PART IV: DBE Certification

I. DBE Certification Standards and Procedures

A. DBE Certification – Determining Burdens of Proof and Group Membership -§26.61 & §26.63

The CUCP uses the certification standards of Subpart D of 49 CFR Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The CUCP will make certification decision based on the facts as a whole. The firm seeking certification has the burden of demonstrating to the CUCP, by a preponderance of evidence , that it meets the requirements of 49CFR Part 26, Subpart D concerning group membership or individual disadvantage, business size, ownership, and control.

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.

Applicants are to submit application packets to the appropriate CUCP certifying agency. Caltrans certifies statewide and the other CUCP certifying agencies certify geographically by region.

It is the role of a Certification Branch to confirm if the majority owner(s) is a member of one of the presumptive groups (Women, Black Americans, Native Americans, Hispanic Americans, Asian-Pacific Americans, and Subcontinent Asian-Americans) by reviewing one of the following documentation which indicates group membership:

- Applicants Birth Certificate
- Parent's or Grandparent's Birth Certificate
- Naturalization Papers
- Passport
- Military Discharge Papers
- Tribal Role Card or Registration with the United Indian Development Association
- Any Other Relevant documentation that Provides Evidence of Group Membership

The CUCP will reputably presume that these individuals are citizens of the United States or lawfully admitted permanent residents.

Individuals who are not presumed to be socially and economically disadvantaged have the burden of proving proof they are socially and economically disadvantaged based on 49 CFR Part 26, Appendix E. The applicant is asked to provide a written justification and backup documents to prove his social and economic disadvantage.

CUCP's application forms and documentation requirement are in Attachment L of this program.

B. Certification – Determining Business Size §26.65

A firms' business size standard is based on the Small Business Administration's definition. It is calculated by averaging the last three years of gross receipts including all affiliated businesses. The CUCP will evaluate taxes, contracts and operating agreements to determine if affiliation exists and to determine if the firm is under the threshold and is eligible to be DBE. Business size standards are relevant to the main NAICS Code dollar size standard or number of employee, and in no case may exceed \$23.98M.

It is important to note that the CUCP also uses Work Codes that further define the NAICS Codes. Work Codes are aligned closely to NAICS codes and licenses held by the disadvantaged owner(s). This information is on the OBEO website at: <u>http://www.dot.ca.gov/hq/bep/find_certified.htm</u>.

Click the second bullet where it says "Click Here to Access the Work Code Template." This document identifies the work code, category, description, license requirement (if any) and the corresponding NAICS Code(s). Codes are only assigned on approval of the firm's certification after a comprehensive review of the firm's primary activities and an onsite visit has been conducted based on 49 CFR Part 26 and 13 CRF Part 121.

C. Certification – Determining Social and Economic Disadvantaged §26.67

The Certification Branch evaluates a Personal Worth (PNW) Statement for each of the owners who make up 51 percent ownership of the applicant firm, as well as their Adjusted Gross Income on their Federal 1040 income taxes. Only disadvantaged persons having a PNW Statement of less than \$1.32M may be considered a potential qualified DBE. We attribute to an individual claiming disadvantaged status any assets he or she has transferred to an immediate family member, trust beneficiary (immediate family), to his or her own firm for less than the fair market value within two years prior to an application for participation in the DBE Program or within two years of our review of the firm's annual affidavit unless the applicant claiming disadvantaged status can demonstrate the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

The CUCP requires the disadvantaged applicant(s) making up the 51 percent ownership to submit a notarized personal net worth statement as provided by USDOT in 49 CFR part 26, Appendix G without change.

The CUCP will exclude the ownership interest in the applicant firm. Exclude the individuals' equity in his or her primary residence. The CUCP will ensure home equity

loan balances are included in the equity calculation and not as a separate liability. The CUCP will no use a contingent liability to reduce the individual's net worth. Only the present value of assets such as vested pension plans, individual retirement accounts, less the tax and interest penalties will be counted.

The CUCP will also review in cases were an individual is able to accumulate substantial wealth. We will review such factors such as whether the average gross income of the owner over the most recent three year period exceeds \$350,000. Whether the income was unusual and not likely to occur in the future. Whether the earnings were offset by losses. Whether the income was reinvested in the firm or used to pay taxes. Other evidence that income is indicative of economic disadvantage and whether the fair market value of the owner's assets exceed \$6 million. If the CUCP determines that the individual is not in fact socially or economically disadvantaged a proceeding will be started under 26.87.

D. Certification – Determining Ownership Certification §26.69

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. To establish real ownership, the majority owner of a corporations must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding; the majority owner of a partnership must own each class of partnership interest and the ownership must be reflected in the partnership agreement; the majority owner of a limited liability company must own each class of member interest. For a sole, proprietor, ownership is shown on the firm's Federal 1040 income taxes, specifically Schedule C. The disadvantaged owner must submit documentation on initial capitalization and if the firm was established so long ago the documents do not exists then a statement explaining how the ownership was acquired and where the funds came from.

To establish substantial ownership, proof of initial capitalization must be submitted. For a corporation with a Statement by Domestic Stock Corporation, Articles of Incorporation, Corporate By-laws, first organizational meeting minutes ratifying the by-laws and electing the officers and directors, board meeting minutes, stock certificate(s), stock transfer ledger, current Federal 1120 or 1120s tax forms with all schedules including compensation to officers for the previous three years; for partnership, proof of initial capital investment for each partner (canceled checks, front and back; loan agreements; promissory notes, etc.; and a written description of the transaction); Partnership Agreement, By-laws, minutes, and buy-out or profit sharing agreements; and Federal 1065 income tax forms with all schedules including Schedule K for the previous three years; for a For Limited Liability Company, all applicable Federal and state taxes and corporate or partnership documents filed with the Secretary of State.

The CUCP will consider all of the facts in the record viewed as a whole, included where the assets originated from and how they were used to obtain ownership of the firm. The disadvantaged owners must enjoy the customary incidents of ownership and share in the risk and profits commensurate with their ownership interest. The CUCP will review salaries, tax documents and state wage forms to determine of salaries are appropriate. If an individual claims ownership through expertise, we would review documents to substantiate the expertise was in a specialized field, of outstanding quality, critical to the firms operations, indispensable to the firm and specific to the work of the firm.

E. Certification – Determining Control §26.71

The socially and economically disadvantaged owner(s) must possess the power to direct or cause the direction to the management and policies of the firm and to make day-to-day decisions, as well as long-term decisions on matters of management, policy and operation. Any delegation of duties must be revocable.

A Responsible Managing Officer (RMO) under California law is an individual who is a bona fide officer of the applicant firm for a contractor's license, and is actively engaged in the classification of work shows that the majority owner has control of the firm [California Business & Professions Code ("Code") §7068(c)]. If state law requires the owner to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged majority owner(s) must possess the required license or credential.

When determining if there are any independence issues, the firm's DBE application, backup documentation and Site Visit Questionnaire is reviewed to determine if there are shared resources, such as personnel, equipment, and/or facilities.

Another item that is reviewed is whether the majority owner(s) has overall control of the operations, management and policy. A determination is made as to whether the majority owner(s) direct the day-to-day management of the firm as well as long-term by reviewing a wide array of documents, such as resumes for each principal, owner and key employee, duty statement(s) providing details of the present day-to-day duties of each principal and key employee of the firm, proof of initial capital investment (canceled checks, front and back; loan agreements; promissory notes, etc.; and a written description of the transaction), any current and applicable license(s) or permit(s) (contractor, professional licenses, etc.) required to transact the firm's business; bank signature card or statement from the bank indicating authorized signers and number of signatures required; financial statements/balance sheets; loan agreements, equipment rentals, lease and/or purchase agreements, bills of sale, invoices accompanied by canceled checks, copies of loan documents, agreements for purchase or rental of office and/or yard space, quarterly wage and withholding reports for the last four quarters, fictitious business name statement, all management service agreements, third party agreements, and/or franchise agreements, complete copy of any existing trusts if stock certificates are held in trust, proof if the firm has been certified as a minority or woman business enterprise by any other agency, Notarized PNW for each socially and economically disadvantaged owner who individually owns or contributes to an ownership interest of 51 or more percent in the firm; and whose ownership and control are relied upon for DBE certification, current Federal 1040 income tax forms with all schedules including Schedule C (if applicable) for the previous three years.

The CUCP will review minutes of the board meeting and firm bylaws to determine if the disadvantaged individual holds the highest officer position in the company.

In order to view the individual as controlling the firm the disadvantaged owner must not engage in outside employment that would hinder or prevent them from devoting sufficient time to controlling the business. This would be established by reviewing resumes, duty statements and some information can be substantiated at the onsite review.

For trucker/truck broker, the following documents are reviewed: driver license, all Department of Motor Vehicle Registration, list of registered trucks, all DMV Permits, and Public Liability and Property Damage Insurance Coverage

For suppliers, list of manufacturers, including addresses, phone numbers, and contact persons, inventory list and address of storage site.

For broker/agent, business license, distributor agreement, selling agreement.

F. Certification – Establishing NAICS Codes §26.71(n)(1)

The CUCP identifies the most specific available NAICS code for the type of work a firm can perform and the disadvantaged owner is able to control and the work the firm will perform on contracts. In order for the firm to receive these codes the must demonstrate that the disadvantaged owner(s) can control the firm with respect to that code(s). If the firm seeks additional codes they must submit their request in writing and provide documentation to prove the disadvantaged owner has the expertise in those codes to control the work. In addition, the CUCP uses Work Category Codes. The Work Category Codes are on the OBEO website, along with a description of each code, corresponding license requirements if applicable and NAICS Codes. The Work Category Codes assist in further describing the work a firm is capable of performing. The link to the Work Code Template is:

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

The size standards are for the most part expressed in either millions of dollars (those preceded by "\$") or number of employees (those without the "\$"). A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm. How to calculate average annual receipts and average employment of a firm can be found in 13 CFR § 121.104 and 13 CFR § 121.106, respectively. SBA also includes the table of size standards in the Small Business Size Regulations, 13 CFR § 121.201. This table includes size standards that have changed since the last publication of 13 CFR § 121.

Below are some of the documents used to assist with the NAICS/Work Category Code assignments to the applicant firms:

- Invoices
- Billings statement
- Purchase agreement
- Supplier or distributor agreement
- License information
- Tax returns

• Onsite report

If a firm wants to add a NAICS and/or Work Category Code, they may send their request in writing to the CUCP certifying agency. At Caltrans, the firm can e-mail the request to: <u>dbe.certification@dot.ca.gov.</u>

The request will be assigned to a certification analyst who will then contact the firm if additional information is needed or a site visit needs to be scheduled.

G. Certification –§26.73

The following areas must be reviewed when making an eligibility determination:

- Present circumstances of a firm;
- Whether the firm is for-profit;
- If the firm is owned by another firm;
- Subsidiaries;
- Alaska Native Corporations.

Regulations §26.73 states that you must not consider commercially useful function (CUF) issues in any way in making decisions about whether to certify a firm as a DBE and CUF issues are not appealable during the certification process. Certification will be made based on standards as a whole.

II. Unified Certification Program §26.81

As mandated by the USDOT, California has a Unified Certification Program in place with a signed Memorandum of Agreement (MOA) approved by US DOT. The MOA will be updated in 2017.

Caltrans is the lead certifying agency and certifies firms throughout California, as well as all files that cannot be handled by individual certifying agencies. Caltrans also maintains the statewide DBE Directory that can be found at: http://www.dot.ca.gov/ucp/GetLicenseForm.do.

The Assistant Director for the OBEO is also the Chair of the CUCP Executive Committee. The Chair of the Executive Committee participants in all committees and receives regular reports from the Standing Committees. The CUCP Executive Committee is comprised of a Chair, Vice Chair, Treasurer and Secretary. The CUCP Executive Committee meets quarterly with at least one in person meeting a year.

The CUCP standing committees are the Documents Committee, Oversight Committee, Support Committee, and Training Committee. The Executive Committee Chair has oversight of these committees. This Chair also develops a CUCP Strategic Management Plan every two years. Each of these standing committees has a Chair who reports directly to the CUCP Executive Committee, which makes all the final decisions on behalf of the CUCP. In addition, there are two clusters (Part 26 and Part 23) that meet monthly by teleconference to discuss certification issues. These clusters work together to coordinate certification processes, review and approve certifying agencies' certification recommendations, assist with training activities, and oversee other activities of the CUCP. The clusters each have a chair and the meeting record is documented.

Caltrans hosts the DBE certification program website. All certifying agencies have a link to the OBEO's website for DBE certification program information and documents pertaining to the CUCP.

The CUCP certifying agencies include:

Central Contra Costa Transit Authority, City of Fresno, Los Angeles County Metropolitan Transit Authority, City of Los Angeles, San Diego County Regional Airport Authority, San Francisco Bay Area Rapid Transit District, San Francisco International Airport, San Francisco Municipal Transportation Agency, San Mateo County Transit District, and Santa Clara Valley Transportation Authority.

Each year the CUCP conducts mandatory annual training for all certifying agencies throughout California. Presenters are from the Federal Highway Administration, Federal Aviation Administration, the Federal Transit Authority and the USDOT. Additional training meetings are also held throughout the year on topics such as onsite, trucking issues, work codes and denial writing. In addition, the CUCP conducts periodic desk reviews and/or onsite visits of the CUCP agencies to ensure consistency in administering the DBE Program.

The CUCP has a training plan for new certifying members. Until he/she has the appropriate training, they are not allowed to enter information into the DBE directory or make certification decisions. CUCP uses standard letters, forms and templates, such as the Site Visit Questionnaire.

III. UCP – Certification Decisions §26.83(a-m)

Caltrans and CUCP Partners will ensure that only firms certified as eligible as DBEs in its program and will determine the eligibility of firms as DBEs consistent with the Standards of 49 CFR 26, subpart D. Caltrans processes DBE applications from firms throughout the state and CUCP members DBE Certification decisions are made independently by each CUCP member's staff within its geographic areas as to which firms qualify. All Certification decisions are made in accordance 49 CFR Part 26, Subpart D& E, this Program Plan and the CUCP Memorandum of Understanding.

There is no fee required for the DBE certification process. Once Caltrans receives a DBE application the following steps are taken:

- 1. The application is logged, date stamped and routed to a certification file analyst;
- 2. The file analyst sends an e-mail to the firm confirming receipt of the application;

- 3. The file analyst identifies any missing documents or clarification required within 10 working days and prepares a letter requesting the additional information and allows the applicant 30 days to respond;
- 4. Once the file analyst receives all requested documents, there are 90 days to make an eligibility determination. If a firm is non-responsive to the request for information and two attempts to obtain the information by the certification analyst, the firm may be denied for non-cooperation. If a firm is responsive, an onsite visit is conducted.
- 5. Onsite visits are grouped together based on location when possible for cost savings. An onsite analyst will conduct the onsite visit using a standard Site Visit Questionnaire to obtain facts supporting or rebutting a firm's eligibility for DBE certification. Interviews are conducted with principal officers of the applicant firm. The onsite analyst my also interview other key personnel of the firm if necessary. The onsite analyst's observations are used in assisting to determine whether a firm meets the criteria. Caltrans may also perform an onsite visit to a job site if there are such sites on which the firm is working at the time of the eligibility determination. The onsite visit report once generated is forwarded to the certification file analyst.
- 6. The certification file analyst reviews the report. Assertions made during the onsite visit are verified in conjunction with the file documents. The entire file is then analyzed including the certification application, documents to determine legal structure, ownership and control of the applicant firm. The firms bonding and financial capacity; lease and loan agreements; bank account signature cards; contracts; and payroll records are also reviewed. The certification file analyst analyzes; Federal income tax returns filed by the firm, its affiliates and owners for the last 3 years. An examination of the listing of equipment owned by or available to the firm, the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program are also considered.
- 7. The certification file analyst then submits a recommendation to the Certification Branch Manager who will further scrutinize the file, and either affirm or reject the recommendation. If agreed, the Certification Branch Manager will forward to the Office Chief for final approval and signature.

If it is necessary to remove a firm's DBE certification, a certification file analyst will evaluate the firm's status and prepare a proposal to remove letter sent to the firm with information and/or action signed by the Office Chief. The firm must respond within 30 days, otherwise, the certification file analyst will prepare a final removal letter and the firm will be removed from the DBE Directory.

On an annual basis, Caltrans and the CUCP partnering agencies will require all DBE firms to provide, an affidavit of "no change" sworn to by the firm's owner(s) before a person who is authorized by State law to administer oaths or an unsworn declaration executed

under penalty of perjury of the laws of the Unitized States. The affidavit of "No Change/Annual update is generated by Caltrans/CUCP and issues a 60-day reminder and 30-day reminder letter to firms reminding them to submit their completed Annual Update Affidavit (AUA), as well as current Federal taxes documenting the firm's size and annual gross receipts.

This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes that the firm previously shared with the CUCP. If there are changes to a firm during the AUA process, firms are required to submit supporting documentation evidencing the changes.

If after reviewing the Annual No Change Affidavit information the CUCP finds evidence to believe that the firm may no longer meet the eligibility requirements additional information may be requested, on a case-by-case basis.

If the DBE firm fails to submit its annual "No Change/Update" Affidavit by the specified deadline the CUCP will send a letter notifying the firm that it may be decertified if it does not respond within 10 business days. If the DBE firm fails to respond within the specified time frame a final letter will be sent the CUCP will send a letter decertifying the firm for failure to cooperate.

The CUCP DBE certification does not include any expiration or recertification terms.

IV. Interstate Certification §26.85

When the CUCP receives a request for interstate certification, a firm is required to complete an out-of-state declaration and provide the CUCP with all documents sent to his/her home state for DBE certification which include a complete copy of the original DBE application form, all supporting documents, and any other information submitted to the home state or any other state related to the firms certification. This includes affidavits of no change and any notices of changes. In addition any notices or correspondence from states other than the home state relating to its status as an applicant or certified DBE in those states. Any notices of appeal and DOT's response if the firm has filed a certification appeal with US DOT must also be submitted.

Firms are not treated as a new certification. Firms will be asked to update specific information, for example, taxes, Personal Net Worth Statement if older than 90 days, etc. If there is pertinent information missing, the firm is sent a letter requesting the information and given 30 days to respond. The file analyst will request the home state's onsite report. The home state has seven (7) days to provide the CUCP with the report. The CUCP then has 60 days from receipt of all information to make an eligibility determination.

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. 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.

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

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.

V. 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. 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.

The CUCP Memorandum of Agreement (MOA) provides records retention standards for all CUCP certifying agencies to follow.

VI. 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 denial determination, specifically provides evidence in the record to support each reason for the denial. All documents and other information on which the denial is based must be made available, on request. When a firm is denied certification, a time period of no more than twelve months must lapse before the firm may reapply to the CUCP for certification. The applicant is not guaranteed that their application, once reopened, will be placed at the top of the processing list. 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. Caltrans sends written notification to the firm by certified mail explaining the reasons for the denial.

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

When a firm is denied DBE Certification, an entry must be made in the Department of Transportation **Office of Civil Rights' Ineligibility Determination Online Database**.

An applicant may withdraw their DBE application any time as long as there has not been an eligibility determination made. There is no waiting period for the firm to reapply.

VII. DBE Ineligibility Complaints & Intent to Remove DBE Certification Status §26.87

Any person may file a written complaint alleging that a currently-certified firm is ineligible, specifying the alleged reasons why the firm is ineligible. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).

The CUCP will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. We may request additional information from the firm and/or conduct any other investigation that we feel is necessary.

If we determine, based on the review, that there is reasonable cause to believe that the firm is ineligible, we must provide written notice to the firm that we propose to find the firm ineligible, giving the reasons for the proposed determination. If we determine that such reasonable cause does not exist, then we will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

If, based on notification by the firm of a change in its circumstances or other information that comes to our attention, we determine that there is reasonable cause to believe that a currently certified firm is ineligible, we will provide written notice to the firm that we propose to find the firm ineligible, giving the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

When we make an administratively final removal of a firm's eligibility, the firm may appeal the removal to the Department under §26.89.

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. A reconsideration official is a third party that had nothing to do with the initial determination, but is familiar with DBE certification. 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 from the date of the notification letter 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 requests an informal hearing, a hearing date will be set and a transcription service will be scheduled to transcribe the informal hearing
- 4. 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.
- 5. 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.
- 6. 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.
- 7. 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

VIII. DBE Suspension of Certification §26.88

The CUCP developed and implemented AUA/Suspension procedures. The CUCP will immediately suspend a DBE's certification when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated. Additionally the CUCP may immediately suspend a DBE's certification when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the CUCP in writing of any material change in circumstances.

When a firm is suspended, the CUCP will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the CUCP information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the CUCP must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87 of this part. If the CUCP commences a decertification proceeding, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE is not appealable to the US Department of Transportation.

IX. Information, Confidentiality, Cooperation §26.109(a)(b)

The CUCP will comply with the provisions of this section including not releasing any business information to third parties, maintaining confidentiality regarding complaints and ensuring no retaliation for anyone involved in the complaints. Also, Caltrans will cooperate fully and promptly with USDOT, and OAs, in a complaint investigation, compliance review, or any inquiries in the DBE Program.

The CUCP complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The CUCP may make available to the public any information concerning the DBE Program release of which is not prohibited by Federal law.

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.

Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.