

DIVISION OF LOCAL ASSISTANCE



CALTRANS OVERSIGHT INFORMATION NOTICE



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Welcome to the COIN!

This is a Caltrans Oversight Information Notice, or “COIN” for short. These short, single-topic bulletins are intended to provide outreach information and guidance to local agencies on issues pertaining to Federal-aid projects. They cover a wide variety of subjects, including discussions of findings resulting from process reviews by Caltrans and/or FHWA, changes in procedures or regulations, reminders of existing procedures or best practices, and other timely information. The goal is to ensure proper and timely delivery of Federal-aid projects.

TOPIC: Assurance that Construction Subcontracts Contain All Federal Requirements and Pertinent Provisions (Form FHWA-1273) of the Prime Contract

At a number of recent and ongoing FHWA Compliance Assessment Program (CAP) audits/reviews, an area of emphasis that is emerging in construction contract administration that requires attention is the assurance that construction subcontracts (between the Prime and the subs) contain the current version of “Federal Contract Provisions, Federal-aid Construction Contracts,” Form FHWA-1273.

Inclusion of Form FHWA-1273 in construction contracts and subcontracts is required by 23 CFR 633.102. The CFR requires the form to be physically attached to the construction contract and subcontracts, and not merely incorporated by reference. In addition, Chapter 12 of the *Local Assistance Procedures Manual*, notes that failure to include the form in the construction contract and subcontracts as an “unrecoverable project deficiency and shall make the construction phase of the project ineligible for federal reimbursement.”

FHWA allows local agencies to accept a certification from the contractor that the Form FHWA-1273 is incorporated in all subcontracts. Such certification is included in the “Subcontracting Request,” Form CEM-1201, (LAPM Exhibit 16-B) available at <http://www.dot.ca.gov/hq/construc/forms/cem1201.pdf> . (Not to be confused with the “Bidder’s List of Subcontractors,” LAPM Exhibit 12-B, which is typically submitted with the Contractor’s bid). Form CEM-1201 is typically submitted after the award and execution of the contract – often at the project’s preconstruction meeting. When the Prime Contractor submits the signed form CEM-1201 to the Agency’s Resident Engineer, he/she is certifying that the Federal Requirements (Form FHWA-1273) have been inserted in the subcontracts and will be incorporated in any lower-tier contract, and that written subcontracts have been executed for any subcontracted work.

The Resident Engineer's approval of this submitted form constitutes the following:

1. That the subcontractors being utilized (both DBE and Non-DBE) correspond with those listed on the "Bidder's List of Subcontractors" in Exhibit 12-B:
<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter12/12b.pdf>
and the "Construction Contract DBE Commitment" in Exhibit 15-G:
<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter15/15g.pdf> forms previously submitted,
2. Acceptance of the Prime Contractor's certification, either on form CEM-1201 completed by the contractor or other suitable subcontractor request form, that all subcontracts and lower-tier subcontracts will include the Form FHWA-1273,(cited as "Section 14" on the Form CEM-1201)
3. Approval of the subcontractors as required per 23 CFR 635.116(b)
4. Verification that the Prime Contractor is performing the required percentage of work (30% minimum, excluding designated specialty items) with its own forces

This blank Subcontracting Request form should be included in the project's special provisions. Once completed, this completed form shall be kept in the local agency's project construction files.