



Local Programs Procedures

LPP 06-01 Manual Update

Subject: DBE Race-Neutral Program Implementation and Civil Rights Updates

Reference: *Local Assistance Procedures Manual*, Chapter 9-Civil Rights and Disadvantaged Business Enterprise Program, Chapter 12-Plans, Specifications & Estimate, Chapter 15-Advertise and Award Project, and Chapter 16-Contract Administration

Original Signed By

Effective Date: May 1, 2006

Approved:

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WHAT IS AN LPP?

LPPs are Local Programs Procedures. These documents are used for the rapid deployment of new procedures and policies on updates of Local Assistance manual, guidelines and programs. They are numbered according to calendar year and order in which released. This is the first LPP issued in 2006; hence, it is LPP 06-01.

PURPOSE

The purpose of this LPP is to immediately implement the race-neutral DBE program and update Local Assistance Procedures Manual (LAPM) in the areas of:

DBE: Caltrans has implemented a race-neutral DBE program, as announced by the Director's, letter to FHWA and FTA dated May 1, 2006. All contracts executed after May 1, 2006 shall have race-neutral provisions in order to be eligible for federal-aid funds. This LPP revises the DBE sections of the manual from race-conscious program guidance to race-neutral program guidance

Civil Rights: Incorporating Presidential Executive Order 13166, Limited English Proficiency (LEP); expanding and clarifying Title VI, ADA, and EEO Contractor Compliance guidance in the areas of implementation, monitoring, and complaints.

BACKGROUND

DBE Race-Neutral Program Implementation: A recent Ninth Circuit Court of Appeals decision involving the Washington State Department of Transportation (WSHDOT) held that WSHDOT lacked sufficient evidence to support the use of race conscious measures on federal-aid contracts. It is important to note that the federally mandated DBE Program itself was not declared unconstitutional. The Ninth Circuit's decision is controlling authority for California and other Western States within its jurisdiction. After an assessment by the Department of its DBE program and the use of race conscious goals on individual contracts, the Department determined that its program may not meet the new evidentiary standards established by the Ninth Circuit.

On May 1, 2006, Caltrans implemented a race-neutral DBE program. This LPP explains the new procedures and guidance, which includes the following changes and are effective immediately:

- Local agencies will no longer have their own separate DBE programs unless such programs have been approved directly by a federal agency. Instead, local agencies must complete a "Disadvantaged Business Enterprise Race-Neutral Implementation Agreement," as discussed in Section 9.6 of this chapter.
- Local agencies may no longer advertise and award contracts with federal-aid funds containing race-conscious DBE goals.
- All federal-aid procurements shall contain race-neutral DBE contract language. (See the revised "Sample Notice to Contractors & Special Provisions" and "Sample Proposal and Contract" which were posted May 1 and contain the necessary language for a race neutral DBE program. They are available to download from the DLA website at: http://www.dot.ca.gov/hq/LocalPrograms/sam_boil/sam_boil.htm.)

Civil Rights Update: The United States Department of Transportation (DOT) published guidance concerning services and policies by recipients of Federal financial assistance from the Department of Transportation related to persons with limited English proficiency based on Executive Order 13166, "Improving Access to Services for Persons With Limited English Proficiency." The guidance is based on the prohibition against national origin discrimination in Title VI of the Civil Rights Act of 1964, as it affects limited English proficient persons. Chapter 9 has been updated with guidance on LEP implementation. Sections on Civil Rights Programs (EEO Contractor Compliance, ADA, Title VI) have been expanded upon and clarified. Caltrans Civil Rights Office is now performing the EEO Contractor Compliance reviews.

USER-FRIENDLY FEATURES

- These new procedures are incorporated in the electronic version of the LAPM that are available at the Division of Local Assistance Home page on the Internet at: <http://www.dot.ca.gov/hq/LocalPrograms/>. Once there, click on "Publications" and click on Local Assistance Procedures Manual or Local Assistance Program Guidelines.

- These new procedures are incorporated in the electronic version of the LAPM that is available at the Division of Local Assistance Home page on the Internet at: <http://www.dot.ca.gov/hq/LocalPrograms/>. Once there, click on “Publications” and then click on “*Local Assistance Program Manual*”. You may also purchase a Compact Disc (CD), titled “*Publications for Local Assistance CD*” which acts as a one-stop shop for information and promotes flexible access to helpful information for local project delivery. Additional information about this product and on how to obtain it is located on the internet at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/LApubsCD.htm>
- Additional user-friendly features were developed to make the manual easier to edit and to access on the DLA website. These added features will allow the users to navigate more quickly through the manual. Chapter formatting has been changed to enhance user-friendliness and reduce overall document size. Internal bookmarks allow for direct access to chapters and subheadings from the table of contents. Right justification has been eliminated, resulting in tighter text, more compact paragraphs and an overall reduced chapter size. **Sidebars indicate the revisions or changes made on the affected pages. However, sidebars were not used to denote changes in Chapter 9, as it was entirely changed.**
- To receive an electronic notification when new information is posted on the DLA web site, please subscribe to the DLA list server at: <http://www.dot.ca.gov/hq/LocalPrograms/sub.htm>
- Comments and suggestions for improvements to the manual or the processes and procedures are welcome. They may be submitted to:

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SUMMARY OF CHANGES

LAPM Item	Change
Chapter 9 Section 9.1 (Introduction) page 9-1	Deleted listing of laws and regulations. Added Local Assistance Website address.
Section 9.2 (Nondiscrimination: Title VI of the Civil Rights Act) pages 9-1 thru 4	Expanded and clarified the Nondiscrimination/Title VI section to include Presidential Executive Order 13166-- Limited English Proficiency (LEP) implementation, monitoring, and complaint processing procedures.
Section 9.3 (Accessibility) pages 9-4, 5	Expanded and clarified Section 9.3 to include state law and regulation, as well as implementation, monitoring, and complaint processing procedures.
Section 9.4 (EEO Contractor Compliance) pages 9-5 thru 7	Expanded and clarified Section 9.4 to include implementation, monitoring, and reporting.
Section 9.5 (Disadvantaged Business Enterprise [DBE]) pages 9-7 thru 10	Explains the background of the DBE Program and explains the major responsibilities of Caltrans, Local Agencies and FHWA in implementation of the State of California, <i>Department of Transportation (Caltrans) Disadvantaged Business Enterprise (DBE) Program Plan</i> .
Section 9.6 (Local Agency Responsibilities Under Caltrans DBE Program Plan) pages 9-11 thru 9-13	Details the completion of the “DBE Race-neutral Implementation Agreement for Local Agencies”. When submitted, this Agreement formally acknowledges the local agencies commitment to implement Caltrans DBE Program Plan.
Section 9.7 (Process Establishing Annual Anticipated DBE Participation Level [AADPL]) pages 9-13 thru 17	Details the process for establishing the local agencies’ Annual Anticipated DBE Participation Level (AADPL).
Section 9.8 (DBE Availability Advisory for Individuals Contracts) pages 9-17 thru 24	Details the process for establishing DBE Availability Advisory for Individual Contracts.

Section 9.9 (References) page 9-25	Updated the lists reference materials used.
Exhibit 9-A pages 9-27 thru 34	Added Exhibit 9-A Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Local Agencies.
Exhibit 9-B page 9-35, 36	Added Exhibit 9-B Local Agency DBE Annual Submittal Form.
Chapter 12 Section 12.8 (Standard Specifications) page 12-14	Deleted “goals” and changed to “...Availability Advisory....”
Section 12.9 (Required Federal Contract Provisions) pages 12-22, 23	Deleted some required DBE specifications and contract provisions for projects with goals.
Exhibit 12-D pages 12-48, 51 thru 53	Exhibit 12-D has been revised to reflect DBE Program changes from race-conscious to race-neutral provisions and “VE” Analysis for bridge projects over \$20 million. Exhibits 12-E, Attachments H, J, K, and I have been revised to reflect DBE Program changes from race-conscious to race-neutral provisions. Attachment L has been added to include “Subcontracting” provision.
Exhibit 12-E, Attachments H, I, J, and K pages 12-61, 62, 92 thru 105	Exhibits 12-E, Attachments H, J, K, and I have been revised to reflect DBE Program changes from race-conscious to race-neutral provisions. Attachment L has been added to include “Subcontracting” provision.
Chapter 15 Table of Contents	Updated the Table of Contents to reflect the changes made.
Section 15.2 (Definition of Terms) pages 15-2 thru 5	Corrected definition of DBE – Disadvantaged Business Enterprise. Removed definitions of WBE and WWBE.
Sections 15.3 thru 15.6 pages 15-5 thru 15-13	Removed procedures and requirements for achievement of contract goals and for good faith determination and monitoring.
Exhibit 15-A page 15-17	Changed timing of requirement for “Local Agency Bidder Information Sheet” from Contract Bid Opening to Contract Award.

Exhibit 15-B page 15-20	Changed DBE goal and good faith efforts requirements to “availability” goal.
Exhibit 15-C page 15-23	Changed DBE Program requirement to DBE Annual Submittal Form requirement.
Exhibit 15-G pages 15-31, 32	Updated “Local Agency Bidder – DBE Information” form to reflect race-neutral program changes.
Exhibit 15-H page 15-33, 34	Removed DBE Information – Good Faith Efforts.
Exhibit 15-I page 15-35	Removed “Bidder DBE information included...” from the Local Agency Bid Opening Checklist.
Exhibit 15-L page 15-41	Removed good faith effort requirements. Added item Exhibit 15G to Local Agency Contract Award Checklist.
Chapter 16 Table of Contents	Updated the Table of Contents to reflect the change made.
Section 16.2 (Definitions of Terms) pages 16-3,4	Modified DBE definition: Deleted references to MBE and WBE, as programs no longer exist. Deleted MBE: Program no longer exists. Deleted WBE: Program no longer exists.
Section 16.3 (Project Supervision and Inspection) page 16-6	Deleted paragraphs regarding violating DBE commitments.
Section 16.6 (Subcontractors) page 16-9	Deleted “credit towards contract goal.” Deleted paragraph regarding DBE substitutions.
Section 16.11 (Labor Compliance) pages 16- 17,e17a	District Labor Compliance Officer was changed to H Q Local Assistance Civil Rights Coordinator.
Section 16.12 (Equal Employment Opportunity) page 16-18	Changed section 16.12 to read that Caltrans Civil Rights Office performs the EEO Contractor Compliance reviews Made some changes on Compliance Reviews and Reporting..
Exhibit 16-X page 113	Removed Exhibit 12-X “Reporting of Compliance Review Determination for Federal-aid Contractor or Subcontractor.”

AUTHORITIES AND REFERENCES

- 49 CFR, Part 26 (DBE Regulations)
- 49 CFR, Part 21 (Title VI Regulations)
- 49 CFR, Part 27 (Accessibility)
- 23 CFR 200 and 230 (EEO Contractor Compliance)

- 28 CFR, Part 35 (Accessibility)
- 23 USC 140(a) (EEO Contractor Compliance)
- 29 USC 791 et seq (Accessibility)
- 42 USC 12101 et seq (Accessibility)
- California Business and Professions Code, Section 7108.5 (Prompt Payment)
- Title 24 of the California Government Code (Accessibility)

CHAPTER 9 CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISES

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Exhibit 9-B Local Agency Dbe Annual Submittal Form.....	9-35

CHAPTER 9 CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISES

9.1 INTRODUCTION

This chapter provides guidance for the local agency in complying with the Civil Rights requirements (Title VI, Accessibility, Equal Employment Opportunity [EEO] Contractor Compliance) and Disadvantaged Business Enterprise (DBE) requirements for federal-aid transportation projects. Each of these areas is addressed in more detail in the following sections. The information contained in this section has been extracted from other documents and should not be considered as a replacement or substitute for the laws, rules and regulations, agreements, circulars, and other guidance available.

The Division of Local Assistance (DLA) website provides additional information and resources that complement guidance in this chapter at <http://www.dot.ca.gov/hq/LocalPrograms/>

9.2 NONDISCRIMINATION: TITLE VI OF THE CIVIL RIGHTS ACT

Nondiscrimination provisions apply to all programs and activities of federal-aid recipients, sub recipients, and contractors, regardless of tier (49 Code of Federal Regulations, Part 21). The obligation not to discriminate is based on the objective of Congress not to have funds, which were collected in a nondiscriminatory manner, used in ways that subsidize, promote, or perpetuate discrimination based on race, color, national origin, sex, age, or physical or mental disability, sexual orientation, or retaliation.

The reach of Title VI in the areas of Environmental Justice and the needs of Limited English Proficient populations have expanded jurisdiction, clients, and complexity.

Environmental Justice (EJ), Executive Order 12898, amplifies Title VI by identifying and addressing, as appropriate, disproportionately high and adverse human health; or environmental effects of federal-aid projects on minority populations and low-income populations. The order is also intended to promote nondiscrimination in federal programs substantially affecting human health and the environment; and to provide minority communities and low-income communities access to public information on, and an opportunity for public participation in, matters relating to human health or the environment.

Limited English Proficiency (LEP), Executive Order 13166, clarifies national origin discrimination as it affects persons with limited proficiency in English. The order requires federal-aid recipients to take reasonable steps to ensure that LEP persons have meaningful access to programs, services, and information free of charge.

Language barriers prohibit LEP persons from:

- Obtaining services and information relating to transportation services, programs, and projects.
- Taking advantage of the transit system, which could affect their jobs and social opportunities.
- Understanding the benefits to which they are entitled when their home or business property is acquired through eminent domain.

IMPLEMENTING TITLE VI

The DLA is responsible for developing policies and procedures in order for local agencies to implement Title VI. DLA has included checks and balances throughout its processes including legal review of major agreements and documents.

Title VI Assurances: Local agencies sign this assurance as part of their Master Agreement with Caltrans (see Exhibit 4-C “aMaster Agreement-Example,” Chapter 4 of the *Local Assistance Procedures Manual* [LAPM]). The Program Supplement Agreement for each project includes the local agency’s reaffirmation of the Nondiscrimination Assurances contained in the Master Agreement.

Environmental: Presidential Executive Order 12898 (EJ) is considered during the preliminary environmental investigation process and completion of the Preliminary Environmental Study (PES) Form. (See Exhibits 6-A “Preliminary Environmental Studies (PES) Form,” and B “Instructions for Completing the Preliminary Environmental Study (PES) Form,” Chapter 6 of the LAPM or refer to this website:

http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p06envrp.pdf)

If a project requires that a Relocation Impact Study and/or Community Impact Assessment be conducted, the local agency follows the guidance set forth in the Standard Environmental Reference (SER). The SER is an on-line electronic reference that sets forth document content and format, as required by law or regulation; and recommended format, if not specified by law or regulation. Chapter 25 of the SER addresses Environmental Justice (EJ) and LEP requirements:

<http://i80.dot.ca.gov/ser/voll/sec3/community/ch25ej/chap25ej.htm>

Public Hearings and Public Involvement Meetings: The attendance and concerns of LEP persons, persons with disabilities, minority populations and low income populations at public involvement meetings and hearings must be carefully documented to comply with Title VI of the Civil Rights Act of 1964, including statistics of participants by race and gender. Public hearing announcements must be made available in languages understood by the affected population. Public hearings should be held at locations that are both geographically and structurally accessible. Interpreters should be made available for LEP persons and for the hearing impaired. (See Chapter 8, “Public Hearings,” of the LAPM.)

Right of Way: On federal-aid projects, all Right of Way (R/W) activities are conducted in accordance with the *Caltrans Right of Way Manual*, unless the local agency has adopted its own procedures, which Caltrans has approved. The *Caltrans Right of Way Manual* requires that the public be provided with Title VI information and Title VI complaint procedures within each of the following R/W functions: Appraisals, Acquisition, Relocation Assistance Program (RAP) and Property Management.

Construction: Federal-aid construction contracts must include provisions, which require compliance with Title VI. The specific contract provision language is included in the FHWA Form 1273 that is physically inserted in the federal-aid construction contract. (See Chapter 12, “Plans, Specifications and Estimate,” of the LAPM.)

Additional Resources for Title VI Implementation: You may access additional information on implementing Title VI (including Potential Title VI Issues, Self Monitoring, Good Practices and Mitigation Measures) in the electronic version of the Caltrans Title VI Guide Book:

http://www.dot.ca.gov/hq/bep/title_vi/t6_guidelines_choice.htm.

Title VI brochures in ten languages are available on the Local Assistance website under Title VI:

http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.htm#TitleVI

MONITORING TITLE VI

There are a number of actions that have been developed for the local agencies in meeting federal requirements. Attendance at public meetings by the DLAE and receiving copies of the meeting minutes during the planning stages of local agency projects help to ensure nondiscrimination and EJ are properly being addressed at these early stages of a project.

To ensure continued compliance by the local agencies, checklists along with a review of the Plans, Specifications & Estimate (PS&E) and attendance at public meetings are some of the tools that are used initially; and then used later to facilitate the DLA in performing process reviews and other quality assurance functions. The local agency checklists and PS&Es are reviewed by the DLAE upon receipt to ensure compliance with Title VI as well as other federal and state regulations.

Plans, Specifications & Estimate (PS&E) Checklist: This checklist ensures that the federal and state contract requirements are being implemented. Specifically, it confirms the implementation of the mandatory requirements of FHWA Form 1273, EEO Certification, DBE provisions, and applicable wage rates, etc. The local agency submits the checklist to the DLAE along with the request for authorization to proceed with construction for federal-aid construction contracts.

Local agency preliminary environmental studies (PES), technical reports, environmental assessment (EA) and environmental impact statements (EIS) provide for data collection and analysis on the demographics of neighborhoods and communities. The DLAEs and Caltrans Environmental Specialists review the environmental documents to ensure that no disproportionate adverse impacts occur on minority and low-income neighborhoods or communities.

Both the DLAE and the Caltrans District Right of Way staff ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 by monitoring R/W activities on local projects. (See Chapter 12, “Plans, Specifications & Estimate,” of the LAPM.)

Local Agency Construction Contract Administration Checklist: This checklist confirms that DBE, Labor/EEO compliance requirements are performed and documented in the project files. This checklist documents that the local agency will meet all of these requirements prior to the award of the construction contract. (See Chapter 15, “Advertise and Award Project,” of the LAPM.)

Resident Engineer's Construction Administration Checklist: This checklist is completed by the local agency Resident Engineer. The purpose of the checklist is to assist the local agencies in administering federal-aid highway construction projects. This checklist documents that the data is similar to the Local Agency Construction Contract Administration Checklist. It also provides a record that the EEO/Wage Rate/False Statements Posters are being posted at specific locations, that employee interviews will be conducted in accordance with the Labor Compliance/EEO Interview form, and that DBE requirements are met. The local agency submits the checklist along with the award package shortly after award of the construction contract. (See Chapter 15, "Advertise and Award Project," of the LAPM.)

TITLE VI COMPLAINTS

The procedures in this section have been established to receive and resolve alleged civil rights discrimination complaints concerning a local agency project or projects constructed with federal-aid funds. Caltrans will investigate and submit a report of findings to FHWA within 60 days of receipt of the complaint. The complainant will be informed by the Caltrans Discrimination Complaint Investigation Unit (DCIU) staff of his/her right to appeal the Caltrans findings to FHWA California Division. An appeal will be accepted by FHWA up to 180 days FROM THE DATE OF RECEIPT OF THE DECISION.

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

9.3 ACCESSIBILITY

Section 504 of the Rehabilitation Act of 1973 (codified as 29 USC Subsection 791 et seq.) requires that any entity receiving federal financial assistance must ensure that persons with disabilities are not discriminated against in any and all aspects of employment, or denied access to the goods or services that these federal fund recipients provide.

The intent of the Americans With Disability Act (ADA) (Public Law 101-336, codified as 42 USC 12101 et seq.) is to "assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities." This law extended the protections offered for persons with disabilities.

28 CFR, Part 35 requires that facilities constructed by, on behalf of, or for the use of a public entity shall be designed and constructed, so that the facility is accessible to, and usable by persons with disabilities.

49 CFR, Part 27 requires nondiscrimination on basis of disability in programs and activities receiving or benefiting from federal financial assistance.

The State of California has also adopted regulations—Title 24 of the California Government Code, specifying that all buildings, structures, sidewalks, curbs and related facilities constructed in California by the use of State, county or municipal funds, or the funds of any political subdivision of the State, shall be accessible to and usable by persons with disabilities.

IMPLEMENTATION

Assurances: Administering agencies sign this assurance, as part of their Master Agreement with Caltrans (see Exhibit 4-C “Master Agreement-Example,” Chapter 4 of the LAPM). The Program Supplement Agreement for each project includes the administering agency’s reaffirmation of the Nondiscrimination Assurances contained in the “Local Agency-State Agreement for Federal-Aid Projects.”

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

DLA’s role is to help ensure that all new and existing altered pedestrian facilities such as, but not limited to, highway rest area facilities, sidewalks, crosswalks, pedestrian overpasses, underpasses and ramps, shall be made accessible to persons with disabilities in accordance with federal and state accessibility standards on all local agency federal-aid projects. (See Chapter 11, “Design Standards,” of the LAPM.)

MONITORING

Field Reviews: During the field review, agreement is reached among all interested parties (local agency, DLAE, FHWA) on the general design features and exceptions for the project. ADA deficiencies are discussed and agreed upon at this time. (See Chapter 7, “Field Reviews,” of the LAPM.)

Plans Specifications & Estimate (PS&E) Checklist: Local agencies certify that their project’s PS&E complies with all applicable federal and state regulations and codes. A PS&E checklist form helps to ensure local agency compliance. ADA compliance is included in this checklist (See Chapter 12, “Plans, Specification & Estimate,” of the LAPM).

Final Inspection: The local agency conducts the final inspection and certifies on the Final Inspection Form that the project was constructed in accordance with the scope and description of the project authorization document and that all federal and state requirements have been met. The DLAE reviews the job site and verifies completion on the Final Inspection Form. (See Chapter 17, “Project Completion,” of the LAPM.)

COMPLAINTS

Follow the same process and procedures for Title VI complaints detailed above. (Please see 9.2 Nondiscrimination: Title VI of the Civil Rights Act.)

9.4 EQUAL EMPLOYMENT OPPORTUNITY CONTRACTOR COMPLIANCE

Federal-aid Highway Act of 1968 (23 USC 140(a)) and implementing regulations at 23 CFR 230, require that the local agency that receives federal financial assistance shall assure that employment in connection with federal highway construction projects is provided without regard to race, color, creed, national origin or sex.

The local agency is also required to include notification of a federal-aid contractor's EEO responsibilities in the advertised contract specifications. In addition, the local agency shall maintain and make available apprenticeship, skill improvement or other upgrading programs, which provide equal opportunity for training and employment without regard to race, color, creed, national origin or sex.

23 CFR 635.117—Sets forth FHWA policies and procedures relating to federal-aid highway projects from authorization to final acceptance by FHWA. It includes a statement encouraging local agencies to use DBEs. Other sections of the CFR include nondiscriminatory bidding procedures, subcontractor and contractor responsibilities, labor, employment and Indian preference provisions, payroll and statements of wages paid, and contract termination procedures.

Form FHWA 1273 “Required Contract Provisions for Federal-Aid Construction Contracts” is a standard form containing required contract provisions and proposal notices, and is required to be physically inserted in each federal-aid highway construction contract and subcontracts (at any tier) of \$10,000 or more. When a contractor signs a federal-aid contract of \$10,000 or more, the nondiscrimination provisions in the Form FHWA 1273 constitutes the contractor's Equal Employment Opportunity/Affirmative Action Program standards for that contract.

IMPLEMENTATION

Assurances: Local agencies sign assurances as part of their Master Agreement with Caltrans. Appendix A to Exhibit B of the Master Agreement includes nondiscrimination in the selection and retention of subapplicants and the prohibition of discrimination in employment practices. (See Exhibit 4-C “aMaster Agreement-Example,” Chapter 4, of the LAPM.)

Required Federal Contract Provisions: Local agencies physically insert the Form FHWA 1273 in the contract document. Local agencies are aware that contractor noncompliance with the EEO specifications in the Form FHWA 1273 may be considered a breach of contract for which payment may be withheld, or the contract terminated. (See Chapter 12 “Plans, Specifications & Estimate,” of the LAPM.)

Construction: Federal-aid prime contractors and subcontractors employment practices in the areas of recruitment and selection decisions (hiring, promotions, terminations, training, etc.) are to be conducted without regard to race, color, creed, national origin, age, disability, or sex.

The local agency's resident engineer should be cognizant of the contractual requirement and monitor the contractor for compliance. Specifically, the resident engineer's area of concern should be whether discriminatory practices take place, particularly in the hiring, firing, training, promotion, and utilization of employees. (Section 16,12 “Equal Employment Opportunity,” Chapter 16 of the LAPM.)

MONITORING

The three checklists listed above in the Section 9.2 Nondiscrimination: Title VI of the Civil Rights Act, serve to assist local agencies in implementing EEO and as a monitoring tool for DLAEs to ensure that EEO requirements are met. In addition, DLA performs periodic EEO process reviews that include a review of DLAE, local agency, and contractor.

The Caltrans Civil Rights Office includes local agency contracts in their compliance reviews of federal-aid contractors.

REPORTING

The federal-aid contractor on federal-aid construction contracts that are active during the last full pay period in July completes “Form FHWA PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report,” (see Chapter 16, “Administer Construction Contracts,” of the LAPM).

9.5 DISADVANTAGED BUSINESS ENTERPRISE

Caltrans is required under 49 CFR, Part 26 to administer a DBE Program. The DBE Program is intended to remedy past and current discrimination against DBEs, ensure a level playing field and foster equal opportunity in Caltrans federal-aid contracts.

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

BACKGROUND

For several years, Caltrans through local agencies implemented a DBE Program in accordance with applicable requirements and included race-conscious components in the program. In May 2005 the Ninth Circuit Court of Appeals issued a decision on *Western States Paving, Inc. vs. Washington Department of Transportation et al*, which required the State of Washington to comply with new evidentiary standards necessary to constitutionally support the use of race-conscious DBE goals such as those being used by Caltrans. The decision is binding on the states within its jurisdiction, including California.

Caltrans initiated a public comment period to request submission of evidence and information from the public that would support its current race-conscious DBE program.

After consideration of comments received during the public comment period, Caltrans determined that it is unable to continue with any level of a race-conscious DBE program, and that DBE participation will be achieved solely by race-neutral measures.

On May 1, 2006, Caltrans implemented a race-neutral DBE program, which includes the following changes:

- Local agencies will no longer have their own separate DBE programs unless such programs have been approved directly by a federal agency. Instead, local agencies must complete a “Disadvantaged Business Enterprise Race-Neutral Implementation Agreement,” as discussed in Section 9.6 of this chapter.
- Local agencies may no longer advertise and award contracts with federal-aid funds containing race-conscious DBE goals.
- Local agencies will still collect and report participation and utilization by DBEs on federal-aid contracts.
- All federal-aid procurements shall contain race-neutral DBE contract language. (See “Sample Notice to Contractors and Special Provisions” and “Sample Proposal and Contract” available to download from the DLA website:
http://www.dot.ca.gov/hq/LocalPrograms/sam_boil/sam_boil.htm

Changing from a race-conscious to a race-neutral DBE program is not retroactive, so contracts executed prior to the implementation date (May 1, 2006), and amendments thereto, with race-conscious DBE contract participation goals, are not affected by the new race neutral DBE program. In terms of contract monitoring, those prime contractors or prime consultants that were awarded contracts with race-conscious DBE participation goals would still be required to meet those goals during performance of the contract. The request for DBE substitution process would also continue for the term of those contracts.

DBE DEFINITIONS

"Annual Anticipated DBE Participation Level (AADPL)" is the local agency's assessment of the level of DBE participation and utilization that the local agency expects could be attained on federal-aid contracts awarded in its jurisdiction in a given fiscal year. This includes an assessment of the availability for specific items of work, that DBEs could reasonably be expected to compete for subcontracting opportunities on a federal-aid contract and their likely availability for work on federal-aid contracts that will be awarded in a given fiscal year. The AADPL is not a goal that the local agency needs to achieve, but the AADPL will be used by the Department to establish a statewide overall DBE participation goal as required by Title 49, Part 26 of the CFR. The AADPL will be derived from the DBE Availability Advisories for the individual contracts. The local agency must have an approved AADPL on file with the DLAE before federal funds can be authorized on any new federal-aid consultant or construction contract.

"Disadvantaged Business Enterprises (DBE)" - A-for-profit "small business concern" that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily business operations. These individuals must be citizens of the United States and (1) any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, or any other group found to be socially and economically disadvantaged by the Small Business Administration. This definition was revised in 1987 to include women.

"DBE Availability Advisory" - This is a level of DBE participation that could reasonably be expected on individual federal-aid contracts. The advisory level is established for individual contracts to assist the prime contractor in ascertaining a reasonable level of DBE participation on any given federal-aid contract. It is not an enforceable goal and compliance with the advisory shall not be a condition of award of any contract.

"Race-conscious measure or program" is one that is focused specifically on assisting only DBEs. The use of contract goals is the primary example of a race-conscious measure in the DBE program.

"Race-neutral measure or program" A race-neutral measure or program is one that, while benefiting DBEs, is not solely focused on DBE firms. For example, small business outreach programs, technical assistance programs, and prompt payment clauses can assist a wide variety of small businesses, not just DBEs. For purposes here, race-neutral includes gender neutrality.

"Small Business Concern" – Small Business Concern means, with respect to firms seeking to participate as DBEs in U.S. Department of Transportation (DOT) assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR

Part 121) that also does not exceed the cap on average annual gross receipts specified in Section 26.65(b) of 49 CFR.

"Statewide Overall DBE Goal" - As required by federal law, Caltrans has established a statewide overall DBE goal. This is the level of DBE participation that the Department estimates can be achieved on all federal-aid contracts awarded in the state in a given fiscal year. In order to ascertain whether the Statewide Overall DBE Goal is achieved, the Department will track DBE participation on all Federal-aid contracts.

DBE PROGRAM RESPONSIBILITIES

FHWA RESPONSIBILITIES

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

CALTRANS RESPONSIBILITIES

Office of Civil Rights

Office of Civil Rights responsibilities include:

- The Disadvantaged Business Enterprise Program in the Office of Civil Rights administers the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan, (Caltrans DBE Program Plan).
- Maintains a directory of certified DBE contractors.
- The DBE Program, in the Office of Civil Rights, assists the District Local Assistance Engineer (DLAE) and the DLA in responding to local agencies' requests for assistance with questions/issues relative to DBE matters.
- Assist with training courses for district and local agencies' staff.

Division of Local Assistance (DLA) and District Local Assistance Engineer (DLAE)

Local Assistance responsibilities include:

- DLA will provide assistance to DLAE and district staff with questions/issues relative to DBE matters.
- DLA and the DLAE monitor local agencies' compliance with DBE program requirements by conducting process reviews. The FHWA will be invited to participate in these process reviews.
- DLA assembles statewide local agency DBE final utilization information and provides information for reports for FHWA.
- DLA will monitor districts for procedure compliance.

- DLA and the DLAE assist with training courses for district and local agencies' staff.
- The DLAE ensures that local agencies with federal-aid contracts submit the local agency's "Race-neutral Implementation Agreement" (Exhibit 9-A)
- The DLAE reviews and approves the local agencies' DBE Annual Submittal Form.
- The DLAE is the focal point for advice and assistance to the local agencies on DBE matters.
- The DLAE will ensure that the final DBE Utilization Report (for consultant and construction contractors) is reported to the DLA for inclusion in the Caltrans DBE report to FHWA.
- The DLAE is responsible for DBE oversight of local agencies pursuant to the Local Assistance Procedures Manual (LAPM) regulations.
- The DLAE will review at least one contract per year for each local agency with an active construction project. This will include review of records of DBE and non-DBE subcontractor utilization, substitutions, and DBE complaints, as well as checking if and verification that a DBE Liaison Officer has been designated.
- The DLAE will review at least one complete PS&E package for the required provisions (including DBE requirements) per year. If deficiencies are discovered, more frequent reviews should be conducted and a corrective action plan is to be submitted by the local agency for the DLAE's approval.
- The DLAE will maintain a list of each local agency's designated DBE Liaison Officer, which will be updated annually with the local agency's submittal of their DBE Annual Submittal Form.
- The DLAE will maintain a file with an index of all local agencies' "DBE Race-Neutral Implementation Agreement" and "DBE Annual Submittal Form". Information from these forms will be entered into LP2000.

LOCAL AGENCY RESPONSIBILITIES

Local agency responsibilities are detailed in Section 9.6. These responsibilities include:

- Submitting a "DBE Race-Neutral Implementation Agreement for Local Agencies" to the Caltrans' DLAE. (See Exhibit 9-A.)
- Developing an AADPL and submitting it to the Caltrans' DLAE for review on the "Local Agency DBE Annual Submittal Form." (See Exhibit 9-B.)
- Designating a DBE Liaison Officer, accountable to the Chief Executive Officer of the local agency, to administer the DBE Program.
- Ensuring prompt and full payment to the prime contractor and subcontractor compliance with the prompt payment clauses of the contract.
- As part of the AADPL, establishing contract specific DBE Availability Advisories for individual contracts. This should be done before submitting a "Request for Authorization" for the engineering and construction phases of a federal-aid project. (See Chapter 3, "Project Authorization" of this manual).

- Including the DBE Availability Advisories and appropriate DBE race-neutral specifications in the PS&E documents.
- Reporting DBE anticipated participation Local Agency Bidder DBE Information (See Exhibit 15-G and Exhibit 10-O.)
- Completing the "Report of Final DBE Utilization" forms (Exhibit 17-F).

9.6 LOCAL AGENCY RESPONSIBILITIES UNDER CALTRANS DBE PROGRAM PLAN

Local agency recipients of federal financial assistance shall comply with all the elements of Title 49, Part 26 of the CFR entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." These provisions apply to all federal-aid transportation projects. Local Agency responsibilities are detailed in the *State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan* (Caltrans DBE Program Plan). A copy of this plan is available to download from the DLA website at:

http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE/DBE_CRLC.htm.

As an initial step, each local agency shall submit a "DBE Race-Neutral Implementation Agreement for Local Agencies" (Exhibit 9-A, of this chapter) to formally acknowledge the local agencies' commitment to implement Caltrans DBE Program Plan, and to comply with all the prescribed responsibilities detailed in the Plan and explained in the LAPM.

Each local agency shall also annually submit a "DBE Annual Submittal Form" (Exhibit 9-B, of this chapter). This form will provide information for the upcoming Federal Fiscal Year (FFY), which will include:

- (1) the local agency's AADPL.
- (2) the methodology for establishing the AADPL.
- (3) identification of the Disadvantaged Business Enterprise Liaison Officer (DBELO)
- (4) prompt pay provision to be used in contracts

DBE RACE-NEUTRAL IMPLEMENTATION AGREEMENT FOR LOCAL AGENCIES

This agreement will need to be completed and submitted to the DLAE by June 1, 2006, by each local agency that currently has a DBE Program, or will be receiving federal financial assistance for their transportation projects. This agreement will need to be signed by the Public Works Director/City Engineer or equivalent level in the agency. Local agencies will not be permitted to continue with their own separate DBE programs, unless such programs have been approved directly by a federal agency.

Some of the elements of the Agreement are highlighted below:

OBJECTIVE/POLICY STATEMENT

Each agreement contains a policy statement expressing a commitment to the Caltrans DBE program, stating its objectives, and outlining responsibilities for its implementation. Each local agency will circulate the statement throughout its organization and to the DBE and non-DBE business communities that perform work on its DOT-assisted contracts.

DBE ANNUAL SUBMITTAL FORM

Each local agency must provide to Caltrans DLAE a completed “DBE Annual Submittal Form for Local Agencies,” (Exhibit 9-B) by June 1 of each year for the following FFY. This form must be received prior to submitting a “Request for Authorization” to proceed with a federal-aid project. This form will include:

1. The amount of AADPL and the methodology for establishing the AADPL that will be used to develop the “DBE Availability Advisories” to advise contractors of DBE availability on the local agency’s FFY individual contracts. The methodology for calculating the “DBE Availability Advisory” is discussed in Section 9.7, “Annual Anticipated DBE Participation Level.”
2. Designated DBE Coordinator information (name, address, phone number, and e-mail address).
3. Local agency’s choice for method of prompt payment of withheld funds to subcontractors.

DBE LIAISON OFFICER

Each local agency must designate a DBE liaison officer (DBELO) who shall have direct independent access to the local agency’s Chief Executive Officer concerning DBE program matters. This person shall be responsible for the duties as described in Exhibit 9-A. in this chapter. Annually, the DBELO designation will be reported to Caltrans when the local agency completes its “Local Agency DBE Annual Submittal Form” (Exhibit 9-B in this chapter).

REQUIRED CONTRACT CLAUSES

Contract Assurance

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

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

Prompt Progress Payment to Subcontractors

Attention is directed to Section 7108.5 of the California Business and Professions Code, which requires a prime contractor or subcontractor to pay any subcontractor not later than 10 days of receipt of each progress payment, unless otherwise agreed to in writing. In addition, Federal Regulation (49 CFR 26.29) requires a prime contractor or subcontractor to pay a subcontractor no later than 30 days of receipt of each payment, unless any delay or postponement of payment among the parties takes place only for good cause and with the prior written approval of the agency. Section 7108.5 of the California Business and Professions Code also contains enforcement actions and penalties. These requirements apply to both DBE and non-DBE subcontractors.

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 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 regular 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 30 days after receipt of the retainage. This clause must require the prompt release of retainage payments from the prime contractor to the subcontractor within a specified number of days after the subcontractor's work is satisfactorily completed.

In the above methods, 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. Federal Regulation (49 CFR 26.29) also requires that any delay or postponement of payment among the parties may take place only for good cause, must have the prior written approval of the agency, and that appropriate means of enforcement such as those contained in Section 7108.5 of the California Business and Professions Code must be included in the contract.

Annually, the local agencies choose one of the above three methods to ensure prompt pay. The local agency's choice will be reported to Caltrans when it completes the "Annual DBE Submittal Form" (Exhibit 9-B of this chapter).

BIDDERS LIST

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

9.7 PROCESS FOR ESTABLISHING ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL (AADPL)

As required by federal law, Caltrans annually establishes a statewide overall DBE goal. When establishing the overall DBE goal, Caltrans must include the level of DBE participation that local agencies could contribute. Local agencies shall calculate the level of DBE participation and utilization that the agency expects could be achieved on contracts to be awarded in its jurisdiction in the following federal fiscal year.

This will include an assessment of the subcontracting opportunities for specific items of work and the DBE availability for specific items of work. In other words, that level of subcontracting opportunities that DBEs could reasonably be expected to compete for on a contract, and their likely availability for work on contracts that will be awarded in a given fiscal year. The AADPL is not a goal that the local agency needs to achieve, but the AADPL will be used by Caltrans to establish a statewide DBE participation goal as required by Title 49, CFR Part 26, Section 26.45. The AADPL will also be used to establish DBE Availability Advisories for individual contracts.

The AADPL will be submitted to the Caltrans DLAE, using “Local Agency DBE Annual Submittal Form” (Exhibit 9-B of this chapter), annually by June 1 in advance of the FFY beginning October 1 for federal-aid contracts. FHWA recipients will follow this process. An exception to this would be if FTA or FAA recipients were required by FTA or FAA to submit the annual information to them or a designee by another date.

The local agency is not required to obtain Caltrans' prior concurrence with the proposed AADPL. However, if the DLAE's review concludes that the AADPL has not been correctly calculated, or that the method for calculating AADPL is inadequate, the DLAE may, after consulting with the local agency, adjust the AADPL or require that the local agency do so.

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

METHODOLOGY—STEP 1

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

USE OF DBE DIRECTORIES AND CENSUS BUREAU DATA

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

USE OF A BIDDERS LIST

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

USE OF DATA FROM A DISPARITY STUDY

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

USE OF THE GOAL OF ANOTHER LOCAL AGENCY

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

USE OF ALTERNATIVE METHODS

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

METHODOLOGY—STEP 2

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

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

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

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

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

RACE-NEUTRAL COMPONENTS

Race-neutral DBE participation includes any time a DBE obtains a prime contract through customary competitive procurement procedures; is awarded a subcontract on a prime contract that does not carry a DBE goal; or even if there is a DBE goal, obtains a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

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

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

TRANSIT VEHICLE MANUFACTURERS

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

TRANSIT VEHICLE MANUFACTURER'S ANNUAL AVAILABILITY GOAL

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

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

9.8 DBE AVAILABILITY ADVISORY FOR INDIVIDUAL CONTRACTS

A DBE Availability Advisory is a level of DBE participation expressed as a percentage of the total contract amount that bidders could reasonably be expected to achieve, by using certified DBE firms. The agency will establish DBE Availability Advisories for individual contracts to assist the bidders in ascertaining what a reasonable level of DBE participation would be for any given contract. The DBE Availability Advisory is not an enforceable goal and compliance with the advisory shall not be a condition of contract award.

In other words, to assist in ascertaining DBE availability for specific items of work, the agency advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project; and their likely availability for work on this project is a certain percentage or "level." DBE Availability Advisories will be set in reference to overall DBE availability for the type and location of work involved. Local agencies may use DBE Availability Advisories percentages only on those DOT-assisted contracts that have subcontracting, supplier, or trucking opportunities.

Local agencies are not required to set a DBE Availability Advisory for every DOT-assisted contract. Local agencies are not required to set each individual contract DBE Availability Advisory at the same percentage level as the AADPL. The DBE Availability Advisory for a specific contract may be higher or lower than the AADPL depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. Meeting the DBE Availability Advisory is not a condition for being eligible for award of any contract.

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

The agency should include a DBE Availability Advisory in each contract wherever the opportunity arises regardless of whether the agency has achieved its AADPL. DBE participation and utilization achieved throughout the state is included in the evaluation of achievement of the Statewide Overall DBE Goal.

PARTICIPATION OPPORTUNITIES

The local agency should structure its project development, contract items, and specifications in a manner that provides opportunities for DBE participation. Participation by DBEs is possible at four main points in the process for developing local federal-aid transportation projects. They are:

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

Preliminary engineering studies (PES) and (EA) are the first steps in developing a local transportation project. DBEs may be engaged to perform all of these activities as a prime consultant or some of these activities as a member of a team of consultants.

Completion of final design and preparation of PS&E normally are a continuation of PE activities. However, in some situations the agency employs different consultants and professional teams to perform these final design activities. DBEs may be engaged at this point.

Acquisition of R/W for local transportation projects may be performed by the local agency or by a qualified consulting firm. Qualified DBEs may be considered for performance of R/W activities.

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

CONSTRUCTION CONTRACT REQUIREMENTS

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

- Individual contract participation availability percentages are established in order to encourage fair DBE participation.
- The project analysis starts with the availability and capacity of certified DBE contractors (in the project area) to perform the items of work. The contractible items of work are evaluated by the local agency in light of the project type and size and normal industry contracting practices.
- Meeting the DBE participation availability advisory is not a condition for being eligible for award of the contract.
- The contract participation availability advisories are set to encourage non-disadvantaged as well as DBE subcontractors to compete for contract work.

LOCAL AGENCY BIDDER DBE INFORMATION

A "Local Agency Bidder DBE Information" form (Exhibit 15-G of the LAPM) will be included in the contract documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form. The completed "Local Agency Bidder DBE Information" form will be submitted to the DLAE at the time of contract execution.

The successful bidder's "Local Agency Bidder DBE Information" form should include the names, addresses and phone numbers of DBE firms that will participate, with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A bidder certified as a DBE should describe the work it has committed to performing with its own forces, as well as any other work that it has committed to be performed by DBE subcontractors, suppliers, and trucking companies.

The bidder is encouraged to provide written confirmation from each DBE is participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the bidder is encouraged to submit a copy of the joint venture agreement.

FINAL REPORT

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

COUNTING WORK TOWARD THE CONTRACT AVAILABILITY ADVISORY

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

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

Specific instances of counting DBE participation are presented in the following sections.

PERFORMED BY DBE

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

- Count the entire amount of that portion of a construction contract (or other contract not covered by the following bullet) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
- Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided that the local agency determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE participation only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE participation.

JOINT VENTURE

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

COMMERCIALLY USEFUL FUNCTION

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 thirty percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, one must presume that it is not performing a commercially useful function.
- When a DBE is presumed not to be performing a commercially useful function, as provided in the previous bullet, the DBE may present evidence to rebut this presumption. The local agency's determination as to whether the firm is performing a commercially useful function should be based upon the type of work involved and normal industry practices.
- Local agencies' decisions on commercially useful function matters are subject to review by the DLAE.

DBE TRUCKING

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

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is getting credit on a particular contract, and there cannot be a contrived arrangement for the purpose of counting DBE participation.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.

MATERIALS AND SUPPLIES

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

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

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

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

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

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

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

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

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

NOT COUNTING PARTICIPATION

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

Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified.

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

APPARENT LACK OF CONTROL

In order for a firm to become a certified DBE, it needs to meet the various requirements prescribed in the CFR, as administered by the California Unified Certification Program (UCP). The DBE must be in control of the firm.

Some situations may arise where the work to be performed by the DBE is being performed by someone else. The local agency will have to use discretion of when to investigate, or report apparent cases of fraud to Caltrans. Caution is needed because those involved in performing the work may legitimately be doing so. Three areas are highlighted here.

1. Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not; however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
2. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be, such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.
3. The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities, and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

DBE ELIGIBILITY

Whether a firm (consultant or contractors) is certified as an eligible DBE is a decision that is made by the UCP. The UCP can also remove the eligibility of a firm and issue a written notice of ineligibility. A directory of certified DBE firms is available from the BEP website at <http://www.dot.ca.gov/hq/bep>

The Caltrans directory list is available in hard copy from:

Department of Transportation
Central Publications Distribution Unit
1900 Royal Oaks Drive
Sacramento, CA 95815
Phone: (916) 445-3520
Fax (916) 324-8997
E-mail: <http://caltrans-opac.ca.gov/publicat.htm>

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

CERTIFICATION

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

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

The form may also be downloaded from the internet at:

<http://www.dot.ca.gov/hq/bep/downloads.html>

DECERTIFICATION

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

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

EXCEPTION

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

APPEAL

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

9.9 REFERENCES

49 CFR, Part 26 (DBE Regulations)
49 CFR, Part 21 (Title VI Regulations)
49 CFR, Part 27 (Accessibility)
23 CFR 200 and 230 (EEO Contractor Compliance)
28 CFR, Part 35 (Accessibility)
23 USC 140(a) (EEO Contractor Compliance)
29 USC 791 et seq (Accessibility)
42 USC 12101 et seq (Accessibility)
California Business and Professions Code, Section 7108.5 (Prompt Payment)
Title 24 of the California Government Code (Accessibility)

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**Exhibit 9-A Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for
Local Agencies**

DISADVANTAGED BUSINESS ENTERPRISE
RACE-NEUTRAL
IMPLEMENTATION AGREEMENT
FOR
LOCAL AGENCIES

DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT

For the City/County of _____, hereinafter referred to as "RECIPIENT."

I Definition of Terms

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

II OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)

The RECIPIENT intends to receive federal financial assistance from the U.S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, the RECIPIENT will sign the California Department of Transportation's Disadvantaged Business Enterprise Implementation Agreement (hereinafter referred to as Agreement). The RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

It is the policy of the RECIPIENT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

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

III Nondiscrimination (§26.7)

RECIPIENT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin. In administering the local agency components of the DBE Program Plan, the RECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

IV Annual DBE Submittal Form (§26.21)

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

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

RECIPIENT will assist Caltrans to achieve its Overall Statewide DBE Goal by race neutral means that may include, but are not limited to the following:

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

VI Quotas (§26.43)

RECIPIENT will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

VII DBE Liaison Officer (DBELO) (§26.25)

RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the RECIPIENT, and ensures that the RECIPIENT is fully and properly advised concerning DBE Program Plan matters. [Specify resources available to the DBELO; e.g., the DBELO has a staff of two professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program.] The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment _____ to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

The DBELO is responsible for developing, implementing, and monitoring the RECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

VIII Federal Financial Assistance Agreement Assurance (§26.13)

RECIPIENT will sign the following assurance, applicable to and to be included in all DOT-assisted contracts and their administration, as part of the program supplement agreement for each project.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

IX DBE Financial Institutions (§26.27)

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

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

X Directory (§26.31)

RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at www.dot.ca.gov/hq/bep.

XI Required Contract Clauses (§§26.13, 26.29)

RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

A. CONTRACT ASSURANCE

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

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

B. PROMPT PAYMENT

Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Withheld Funds to Subcontractors

The local agency shall include either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30-ays after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30-days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XIV Local Assistance Procedures Manual

The RECIPIENT will advertise, award and administer DOT-assisted contracts in accordance with the most current published Local Assistance Procedures Manual (LAPM).

XV Bidders List (§26.11)

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

XVI Reporting to the DLAE

RECIPIENT will promptly submit a copy of the Local Agency Bidder-DBE Information (Exhibit 15-G or Exhibit 10-O of the LAPM) to the DLAE at the time of execution of consultant or construction contract award.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F of the LAPM immediately upon completion of the contract for each consultant or construction contract.

XVII Certification (§26.83(a))

RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program will participate as DBEs on DOT-assisted contracts.

XVIII Confidentiality

RECIPIENT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information consistent with federal, state, and local laws.

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

Date: _____

[Print Name of Local Agency Recipient's Chief
Executive Officer]

Phone Number: _____

This California Department of Transportation's Disadvantaged Business Enterprise Program Plan Implementation Agreement is accepted by:

[Signature of DLAE]

Date: _____

[Print Name of DLAE]

Distribution: (1) Original –DLAE
(2) Copy-local agency after signing by DLAE

DBE Race-neutral Implementation Agreement for Local Agencies (05/01/06)

Exhibit 9-B Local Agency DBE Annual Submittal Form

TO: CALTRANS DISTRICT _____
District Local Assistance Engineer

The amount of the Annual Anticipated DBE Participation Level (AADPL) and methodology are presented herein, in accordance with Title 49 of the Code of Federal Regulations, Part 26, and the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The City/County/Region of _____,
submits our AADPL information. We have established an AADPL of _____ % for the Federal Fiscal Year
____ / _____, beginning on _____, and ending on _____.

Methodology

[Please explain methodology used. See Chapter 9, Section 9.7 of the Local Assistance Procedures Manual (LAPM) for guidance in developing the AADPL.]

Disadvantaged Business Enterprise Liaison Officer (DBELO)

[Please provide the name, address, phone number, fax number, and electronic mail address of the DBELO for the coming Federal Fiscal Year.]

Prompt Pay

Federal regulation (49 CFR 26.29) requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage, kept by the prime contractor or subcontractor, to a subcontractor. (Attached is a listing of the three methods. On the attachment, please designate which prompt payment provision the local agency will use.)

Submitted by:

(Signature of Local Agency Recipient's Chief
Executive Officer)

Date

(Print Name of Local Agency Recipient's Chief
Executive Officer)
Reviewed by Caltrans:

Phone Number

(Signature of Caltrans District Local Assistance Engineer [DLAE])

Date

Distribution: (1) Original -DLAE DBE Annual Submittal Form (05/01/06)
(2) Copy-local agency after signing by DLAE

(Attachment)

Prompt Payment of Withheld Funds to Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

- No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors
- No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30-days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

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12.2 PS&E PROCEDURES FOR MAJOR NHS PROJECTS

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

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

The DLAE should consult with headquarters Division of Local Assistance (DLA) for assistance with the review of the local agency procedures.

12.3 ENVIRONMENTAL PROCEDURES

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

COMPLIANCE WITH ENVIRONMENTAL LAWS

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

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

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

CALTRANS SPECIFICATIONS ON THE INTERNET

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

- First access the Caltrans Home Page at www.dot.ca.gov
- Then call up the ESC Home Page, and
- Finally, call up the Office of Office Engineer Home Page. Then go to "Master" at <ftp://trescftp.dot.ca.gov/pub/Highway-Specs/SSPs/Boilers/Masters>.

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

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

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

SAMPLE "BOILER PLATE" CONTRACT DOCUMENTS ON THE INTERNET

Microsoft Word versions of a complete sample set of "Boiler Plate" construction contract documents are available on the Internet, in the Caltrans Local Assistance Home Page at:

<http://www.dot.ca.gov/hq/LocalPrograms/public.htm>

Follow the directions on the Home Page to "Sample Boiler Plate Contract Documents." The file can be downloaded and edited, and includes a sample Notice to Contractors & Special Provisions as well as a sample Proposal and Contract. These documents are in accordance with the *July 1999 Caltrans Standard Specifications and Standard Plans*. They are edited versions of the *Caltrans Office Engineers Standard Special Provisions* and other contract documents, which are used for Caltrans highway construction contracts.

Contents

The Notice to Contractors & Special Provisions are combined into one document. The Notice to Contractors provide prospective bidders with the bid opening date, time and location where bids will be received and opened; a brief description of the project; the Disadvantaged Business Enterprise (DBE) Availability Advisory (See Chapter 9, Section 9.8), time and location of pre-bid meetings including DBE participation; notice that the project is subject to Buy America provisions, the Engineer's Estimate, location for purchase of plans and specifications, as well as reference to federal wage rate information.

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

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

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

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

12.9 REQUIRED FEDERAL CONTRACT PROVISIONS

GENERAL FEDERAL REQUIREMENTS

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

FORM FHWA 1273

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

I. GENERAL

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

LIQUIDATED DAMAGES TABLE (L%)

Project Estimate	Project Type					
	Resurfacing* /Rehab	New Highway	Realignment/ Widening	Landscaping	Soundwall	Others
Over \$30 million	10%	10%	13%	15%	15%	15%
\$10 million to \$30 million	10%	12%	15%	15%	15%	15%
\$5 million to \$10 million	10%	15%	15%	15%	15%	15%
\$750k to \$5 million	15%	15%	15%	18%	18%	15%
Less Than \$750k	15%	20%	20%	18%	20%	15%

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

The calculated liquidated damages should be rounded up in \$100 increments to determine the amount to be specified.

If the local agency uses an alternate method to determine liquidated damages for locally funded projects, this method may be used on federal-aid projects as long as it avoids excessive charges. The local agency should have a liquidated damage calculation in the project files.

BUY AMERICA

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

Buy America provisions do not apply to:

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

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

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

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

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

DISADVANTAGED BUSINESS ENTERPRISE

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

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

- DBE Program Policy
- Definitions
- DBE Contract Availability Advisory
- Eligibility Criteria

- Records and Reporting Requirements

Contracts shall contain special provisions stating that it is the local agency's policy to comply with Part 26 of Title 49, Code of Federal Regulations (CFR) and specify the contractor's obligation under these regulations.

If Caltrans' standard specifications will be used, appropriate editing of the *Sample Boiler Plate Contract Documents* will be necessary (see "*Sample Boiler Plate Contract Documents on the Internet*" in Section 12.8 of this chapter).

In accordance with Section 9.4 *Local Agency DBE Program*" of Chapter 9, *Civil Rights and Disadvantaged Business Enterprises*, each local agency is required to create and maintain a bidders list containing information about all DBE and non-DBE firms that bid or quote on the local agency's federal-aid construction contracts. The required bidders list is to include the name, address, DBE/non-DBE status, date established and annual gross receipts of the firms. Exhibit 12-G *Bidder's List of Subcontractors (DBE and Non-DBE)* in this chapter consists of sample forms that local agencies may choose to use in their solicitations to compile a bidders list as follows:

- (a) "Bidder's List of Subcontractors (Part 1)" is required in accordance with Section 2-1.054 of the Caltrans Standard Specifications, and
- (b) "Bidder's List of Subcontractors (Part 2)" of those providing a quote or bid, but not selected, which is needed to compile a bidders list.

NONCOLLUSION CERTIFICATION

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

FEDERAL TRAINEES (ON-THE-JOB TRAINING)

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

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

- Provide training for women and minorities which will upgrade their job skills, thereby increasing their access to higher-paying trade jobs and journeyman-level positions and
- Ensure that a diverse work force will meet future labor needs in the construction industry.

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

The major components of an OJT program include:

- The local agency must include the required federal training special provisions in the PS&E package if the project size and duration warrant an OJT program.
- The local agency should select contracts that contribute to the “Contract Training Goals.” These contracts must show the number of trainees, number of trainees upgraded to journeyman and level of skills.
- The local agency must review the training programs proposed by contractors. Approval or rejection is based on the legitimacy of the job-skill classifications proposed and the number of training hours specified.
- Caltrans must determine if statewide OJT is effective.
- The contractor is responsible for recruitment and selection of trainees.
- The contractor must evaluate training based on an approved training program.
- The contractor shall report the number of trainees and jobs using Form PR1391 “Federal-aid Highway Construction Contractors EEO Report” to the local agency. The local agency shall forward Form PR1391 to the Caltrans District Labor Compliance Officer (see Exhibit 16-O of this manual).
- OJT provision costs are reimbursed by the FHWA in accordance with the Federal Requirement Training Special Provisions” included in selected contracts. Required trainees/apprentices are to be funded on the bidding schedule or by change order at \$0.80/hour; or the training program can be a bid item with the same reimbursement ratio as the construction project. OJT support services include recruiting, counseling, remedial training, and OJT program administration by others.
- If the contractor does not show a good faith effort to provide acceptable training to the trainees specified, a sanction may be applied. Sanctions may include withholding progress payments if effective on-the-job training is not provided.

PS&E CHECKLIST

Agency _____

Federal Project No. _____

This form is to be completed by the local agency and attached to the PS&E Certification. See Exhibit 12-E for instructions and the referenced attachments.

I. HIGHWAY SYSTEM

- On the National Highway System (NHS)
 Off the NHS

II. FUNCTIONAL CLASSIFICATION (Check as many as appropriate)On the Federal-aid System

- | | |
|-------------------------------------------------------------------|---------------------------------------------------|
| <input type="checkbox"/> Urban Principal Arterial - Fwy or Expwys | <input type="checkbox"/> Rural Principal Arterial |
| <input type="checkbox"/> Urban Principal Arterial - Other | <input type="checkbox"/> Rural Minor Arterial |
| <input type="checkbox"/> Urban Minor Arterial | <input type="checkbox"/> Rural Major Collector |
| <input type="checkbox"/> Urban Collector | |

Off the Federal-aid System

- | | |
|--------------------------------------|------------------------------------------------|
| <input type="checkbox"/> Urban Local | <input type="checkbox"/> Rural Minor Collector |
| | <input type="checkbox"/> Rural Local |

III. TYPE OF CONSTRUCTION (Check appropriate box)

- New or Reconstruction
 Resurfacing, Restoration and Rehabilitation (3R)
 Preventive Maintenance

IV. METHOD OF CONSTRUCTION**A. Contracting Method** (Check appropriate box)

- Competitive bidding
 Other than competitive bidding

(If the contracting method is other than competitive bidding, check appropriate box below.)

- The project is State-Authorized. A Public Interest Finding is on file in the contract records justifying the method.
 The project is subject to FHWA Full Oversight. A Public Interest Finding justifying the method has been submitted and approved by Caltrans and FHWA.

B. Force Account (Day Labor) (Check appropriate box)

- The entire work will be constructed by contract as indicated above.
 Some work (incidental to the main purpose of the project) will be constructed by Force Account. A Public Interest Finding is on file in the contract records justifying the work.
 The entire project will be constructed by Force Account (Day Labor).

(If the entire project will be constructed by Force Account (Day Labor)

- The project is State-Authorized and not subject to FHWA oversight. A Public Interest Finding is on file in the contract records justifying the work.
 The project is subject to FHWA Full Oversight. A Public Interest Finding justifying the method has been submitted and approved by Caltrans and FHWA.

V. ENVIRONMENTAL ANALYSIS (Check box if requirement is met)

- The PS&E is fully responsive to the necessary actions called for by the environmental document, permit conditions and other agreements.

VI. VALUE ENGINEERING (VE) ANALYSIS (Check appropriate box if the project is on the NHS)

- VE analysis been performed on this project and a copy of the analysis has been forwarded to the Caltrans District Value Analysis Coordinator).
- VE analysis has not been performed; the estimated project cost is <\$25 million, or >\$25 million for bridge projects.

VII. GEOMETRIC DESIGN STANDARDS (Complete this section if project changes existing geometrics)

A. Geometric Design Standards Used (Check appropriate box)

- Caltrans Design Standards (on State Highway System)
- Current AASHTO Standards
- 3R Projects - Minimum Standards for Geometric Design of Federal-Aid Resurfacing, Restoration, and Rehabilitation Projects on Local Streets and Roads, *Local Assistance Procedures Manual*, State of California Department of Transportation.
- Local Agency Design Standards Date approved _____

B. Deviations from Controlling Criteria (check appropriate box for each controlling criteria)

Criteria Met	Design Criteria Not Met	Design Exception Approval Date	Controlling Criteria
<input type="checkbox"/>	<input type="checkbox"/>	_____	Design Speed
<input type="checkbox"/>	<input type="checkbox"/>	_____	Lane Width
<input type="checkbox"/>	<input type="checkbox"/>	_____	Shoulder Width
<input type="checkbox"/>	<input type="checkbox"/>	_____	Bridge Width
<input type="checkbox"/>	<input type="checkbox"/>	_____	Horizontal Alignment
<input type="checkbox"/>	<input type="checkbox"/>	_____	Vertical Alignment
<input type="checkbox"/>	<input type="checkbox"/>	_____	Grades
<input type="checkbox"/>	<input type="checkbox"/>	_____	Stopping Sight Distance
<input type="checkbox"/>	<input type="checkbox"/>	_____	Cross Slopes
<input type="checkbox"/>	<input type="checkbox"/>	_____	Super elevation
<input type="checkbox"/>	<input type="checkbox"/>	_____	Horizontal Clearance
<input type="checkbox"/>	<input type="checkbox"/>	_____	Vertical Clearance

- C. Certification/Disclosure Forms** (Check if included and indicate page number) Page No.
- EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION* (Exhibit 12-E, Attachment C) _____
 - NONCOLLUSION AFFIDAVIT* (Exhibit 12-E, Attachment D) _____
 - DEBARMENT AND SUSPENSION CERTIFICATION* (Exhibit 12-E, Attachment E) _____
 - NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS*
(Exhibit 12-E, Attachment F) _____
 - DISCLOSURE OF LOBBYING ACTIVITIES* (Exhibit 12-E, Attachment G)..... _____
 - 2-1.015—FEDERAL LOBBYING RESTRICTIONS* (Exhibit 12-E, Attachment H) _____
 - Equivalent provisions (Attach complete listing, including page numbers)

- D. Liquidated Damages** (Check appropriate box and indicate page number) Page No.
- Caltrans SSP *SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES* (Exhibit 12-E, Attachment I) is included in this contract.....a..... _____
 - Equivalent provisions are included.a..... _____

E. Disadvantaged Business Enterprise (DBE)/Subcontracting

A. Local Agency "Annual Anticipated DBE Participation Level (AADPL)(the AADPL percentage comprising all contracts) _____

B. This Specific Contract DBE Availability Advisory Percentage _____

C. Example:

Local Agency Annual Anticipated DBE Participation Level is 10% (comprised of this contract's availability advisory of 5% and another contract's availability advisory of 15% assuming two contracts of equal value)

This contract has a specific DBE availability advisory percentage to meet the intent of the Caltrans DBE Program Plan and the local agency's Annual Anticipated DBE Participation Level.

This contract has no specific DBE availability advisory percentage, as it has been determined that one is not appropriate.

For use with all Federal-aid contracts. (Check if included and indicate page number)

a. The following applicable Caltrans Standard Special Provisions (SSPs) to the Caltrans Standard Specifications or their equivalent are included in the contract Special Provisions with page numbers noted (editing may be required)

- | | Page No. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| <input type="checkbox"/> 2-1.01 GENERAL Required Listing of Proposed Subcontractors and Required Contract Assurance Statement (Exhibit 12-E, Attachment H) or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> LISTING OF SUBCONTRACTORS (Form in Sample Proposal and Contract) or <i>Equivalent Form</i> | _____ |
| <input type="checkbox"/> 2-1.015 Federal Lobbying Restrictions (Has been included) or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> 2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE) (Exhibit 12E, Attachment H) or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> 2-1.03 DBE AVAILABILITY ADVISORY (Has been included)
Either | _____ |
| <input type="checkbox"/> 2.a Used for Federal-Aid projects with a DBE availability advisory percentage
or | _____ |
| <input type="checkbox"/> 2.b Use for Federal-Aid projects without a DBE availability advisory percentage | _____ |
| <input type="checkbox"/> 2-1.02A SUBMISSION OF DBE INFORMATION (Exhibit 12-E, Attachment H) or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> 3- AWARD AND EXECUTION OF CONTRACT (Exhibit 12-E, Attachment I) or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> Caltrans SSP 5-1.- SUBCONTRACTOR AND DBE RECORDS (Exhibit 12-E, Attachment J) or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> SUBMISSION OF DBE INFORMATION (Exhibit 12-E, Attachment H) or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> Caltrans SSP 5-1.- DBE CERTIFICATION STATUS CHANGE (Exhibit 17-O) or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> Caltrans SSP 5-1.- PERFORMANCE OF SUBCONTRACTORS (Exhibit 12-E, Attachment K) or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> Caltrans SSP 5-1. SUBCONTRACTING (Exhibit 12-E, Attachment L) or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> Caltrans SSP 5-1. PROMPT PROGRESS PAYMENTS TO SUBCONTRACTORS or <i>Equivalent Provisions</i> | _____ |
| <input type="checkbox"/> Caltrans SSP 5-1. PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS. or <i>Equivalent Provisions</i> | _____ |

b. The following forms are applicable with the above SSP's.

- LOCAL AGENCY BIDDER-DBE INFORMATION Form (Exhibit 15-G) or
Equivalent Provisions _____
- FINAL REPORT UTILIZATION OF DISADVANTAGED BUSINESSES (Exhibit 17-F) or
Equivalent Provisions..... _____
- Bidder's List (49 CFR, Part 26.11) List data for all firms that bid as prime, or bid ,or quote
subcontracts for this contract (optional Exhibit 12-G). _____

F. Buy America Specification (Check appropriate box and indicate page number if requirement applies. See Section 12.9 of the *Local Assistance Procedures Manual* for requirement.)

Page No.

- Caltrans SSP 5-1- BUY AMERICA REQUIREMENTS (Exhibit 12-E, Attachment M)..... _____
- Equivalent provisions are included.a..... _____

- Buy America specifications are not included in contract.
- Waiver for the following has been approved by FHWA: _____ Date _____.

G. Federal Trainees (Check appropriate box and indicate page number if requirement applies)

- The project has less than 100 working days. A Federal Trainee goal and special provisions are not required.
- Analysis of the Engineers Estimate has the dollar value under \$200,000. A Federal Trainee goal and special provisions are not required.
- Caltrans SSP - *FEDERAL REQUIREMENT TRAINING SPECIAL PROVISIONS* (Exhibit 12-E, Attachment N, FR-15 and FR-16) are included. (The Trainee goal is _____.) _____ Page No.
- Equivalent provisions are included (The Trainee goal is _____.)..... _____

H. Federal Wage Rates (Check appropriate box and indicate page number if Federal Wages Rates are included) _____ Page No.

- Federal Wages Rates are physically incorporated in this contract. _____
Note: By checking the above box, the local agency is indicating that they are aware of the Federal-aid "10-day rule" requirement.
- This project is not located on a Federal-aid Route. Federal Wage Rates are not required.

I. Relations with Railroad (Check appropriate box and indicate page number if special provisions are included) _____ Page No.

- The required provisions are included. _____
- This project does not involve the use of railroad properties or adjustments to railroad facilities.

XIII. RESTRICTED CONTRACT PROVISIONS (CHECK APPROPRIATE BOX)

A. Indian Preferences (Check appropriate box and provide required information)

- Not included
- Included. The project is on or near the _____ Indian Reservation.

B. Bonding and Prequalification (Check box if requirement met)

- Bonding or prequalification, if required, will not be used to restrict competition, prevent submission of a bid by or prohibit consideration of a bid submitted by any responsible contractor, whether a resident or nonresident of the State of California.

C. Price Adjustment Clauses (Check appropriate box)

- Price adjustment clauses are not included.
- Price adjustment clauses are included. The federal conditions restricting the use of these clauses have been met and are documented in the project files

C. CERTIFICATION/DISCLOSURE FORMS

The following certification/disclosure forms shall be included in all federal-aid projects. Except for the Disclosure of Lobbying form and instructions, equivalent provisions may be used.

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION (Attachment C)

NONCOLLUSION AFFIDAVIT (Attachment D)

DEBARMENT AND SUSPENSION CERTIFICATION (Attachment E)

NONLOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS (Attachment F)

DISCLOSURE OF LOBBYING ACTIVITIES (Attachment G)

Check appropriate box (i.e., Attachments or equivalents) and indicate page number.

D. LIQUIDATED DAMAGES

Provisions for liquidated damages shall be included in all federal-aid contracts on the NHS (see Chapter 12 *Plans, Specifications & Estimate*, of the *LAPM* for requirements.). Caltrans SSP *SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES* (Exhibit 12-E, Attachment I, also in *Sample Notice to Contractors & Special Provisions*) or equivalent provisions shall be used.

Check appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number.

E. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Fill in the required project information before completing this section.

It is the policy of the FHWA that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Individual project availability advisory percentages will be established based on the criteria identified in the local agency's DBE Annual Submittal Form (Chapter 9, Exhibit 9-B). Complete evaluation documentation is required and shall be retained for each project (see DBE references in the LAPM).

In some cases, a specific availability advisory percentage may not be appropriate due to the extremely limited subcontracting opportunities for DBEs or the lack of certified DBEs in the geographic area in which work is to be performed.

For all federal-aid projects, Caltrans SSPs (and the referenced Caltrans *Standard Specifications*), or equivalent provisions, are required to describe DBE Program Policy, the contract goal, eligibility criteria, procedures for counting DBE participation, award documentation procedures, post award compliance procedures, and required records and reporting.

Caltrans SSP *SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS* (Exhibit 12-E, Attachment H, also in *Sample Notice to Contractors & Special Provisions*) includes requirements for DBE subcontractor listing, Federal Lobbying Restrictions, Disadvantaged Business requirements, and DBE Availability Advisory for project.

Check appropriate boxes (i.e., Caltrans SSPs or equivalent provisions) and indicate page number. If equivalent provisions are used, attach a complete listing, including page numbers.

F. BUY AMERICA SPECIFICATION

Current Buy America regulations are discussed in Section 12.9 of the *LAPM*. Buy America requirements do not apply to minimal use of the material such that the cost, delivered to the project site, is less than \$2,500 or one-tenth-of-one-percent of the contract amount, whichever is greater. (Attachment M)

If the Buy America requirement applies, check the appropriate box (i.e., Caltrans SSP or equivalent) and indicate page number. If the requirement does not apply, check the last box.

G. FEDERAL TRAINEES

Chapter 12, *Plans, Specifications & Estimate*, of the *LAPM* includes information for On-the-Job Training. If a Federal Trainee goal is not required, check the appropriate box. If a goal is required, check appropriate box (i.e., Caltrans SSP or equivalent), indicate the trainee goal and the page number. (Attachment N)

H. FEDERAL WAGE RATES

If payment of federal predetermined wages are required per instructions in Section B.2.a, “Section IV. *Payment of Predetermined Wages*, they shall be physically incorporated into the contract and in all related subcontracts

Check appropriate box (i.e., Federal Wages Rates are included or not required) and indicate page number if included.

By checking the box the local agency is indicating that they are aware of the federal-aid “10-day rule” for federal wage rates. See section 12.9 *Required Federal Contract Provisions – Federal Wage Rates* for local agency requirements under the “10-day rule.”

I. RELATIONS WITH RAILROAD

Where construction of a federal-aid project requires use of railroad properties or adjustments to railroad facilities, there shall be an agreement in writing between the local agency and the railroad company. The pertinent portions of the agreement applicable to any protective services required during performance of the work shall be included in the project specifications and special provisions.

Check appropriate box (i.e., provisions are included or not required). If provisions are included, indicate page number.

XIII. RESTRICTED CONTRACT PROVISIONS

Unless otherwise noted, see Section 12.10 of Chapter 12 for detailed guidance.

SECTION 2. PROPOSAL REQUIREMENTS AND CONDITIONS

2-1.01 GENERAL

The bidder's attention is directed to the provisions in Section 2, "Proposal Requirements and Conditions," of the Standard Specifications and these special provisions for the requirements and conditions which the bidder must observe in the preparation of the proposal form and the submission of the bid.

In addition to the subcontractors required to be listed in conformance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, each proposal shall have listed therein the portion of work that will be done by each subcontractor listed. A sheet for listing the subcontractors is included in the Proposal.

The form of Bidder's Bond mentioned in the last paragraph in Section 2-1.07, "Proposal Guaranty," of the Standard Specifications will be found following the signature page of the Proposal.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Proposal. Signing the Proposal shall also constitute signature of the Noncollusion Affidavit.

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

2-1.015--FEDERAL LOBBYING RESTRICTIONS.--Section 1352, Title 31, United States Code prohibits Federal funds from being expended by the recipient or any lower tier subrecipient of a Federal-aid contract to pay for any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal-aid contract, the making of any federal grant or loan, or the entering into of any cooperative agreement.

If any funds other than federal funds have been paid for the same purposes in connection with this federal-aid contract, the recipient shall submit an executed certification and, if required, submit a completed disclosure form as part of the bid documents.

A certification for federal-aid contracts regarding payment of funds to lobby Congress or a federal agency is included in the Proposal. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in the Proposal. Signing the Proposal shall constitute signature of the Certification.

The above referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding \$100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

The Contractor, subcontractors and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal Action.

2-1.02 DISADVANTAGED BUSINESS ENTERPRISE (DBE).-- This contract is subject to Part 26, Title 49, Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." The Regulations in their entirety are incorporated herein by this reference. Disadvantaged business enterprises (DBEs), as defined in 49 CFR part 26 are encouraged to participate in the performance of contracts financed in whole or in part with Federal Funds. The Contractor should ensure that DBEs have the opportunity to participate in the performance of this contract and shall take all necessary and reasonable steps for this assurance. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Bidders shall be fully informed with respect to the requirements of the DBE Regulations. The DBE Regulations in their entirety are incorporated herein by this reference. Attention is directed to the following matters:

- A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto;
- B. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company;
- C. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest;
- D. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work;
- E. DBEs must be certified by California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 1. The Caltran's "Civil Rights" web site at:
<http://www.dot.ca.gov/hq/bep>.
 2. The Caltran's DBE Directory. This Directory may be obtained from the Department of Transportation, Materiel Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520;
- F. When reporting DBE participation, bidders may count the cost of materials or supplies purchased from DBEs as follows:
 1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph F.2., if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad

- hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph F.2.
3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
- G When reporting DBE participation, bidders may count the participation of DBE trucking companies as follows:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 4. The DBE may lease trucks from another DBE firm including an owner-operator, who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 5. The DBE may also lease trucks from a non-DBE firm including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE;
 6. For the purposes of this paragraph G, 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.
- H. Bidders are encouraged to use services offered by financial institutions owned and controlled by DBEs.

2-1.03 DBE AVAILABILITY ADVISORY

As required by federal law, Caltrans has established a statewide overall DBE goal. In order to ascertain whether that statewide overall DBE goal is being achieved, Caltrans is tracking DBE participation on all Federal-aid contracts administered by cities/counties and other local agencies.

(Use the following paragraph in Federal-aid projects with a DBE availability advisory percentage. Delete paragraph if project has no DBE availability advisory percentage.)

To assist bidders in ascertaining DBE availability for specific items of work, the Agency advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project, and their likely availability for work on this project is <insert %> percent. The Agency also advises that participation of DBEs in the specified percentage is not a condition of award..

(Use the following paragraph in Federal-aid projects without a DBE availability advisory percentage. Delete paragraph if project has a DBE availability advisory percentage.)

The Agency has not established a DBE Availability Advisory for this project. Bidders who obtain DBE participation on this project will assist the state in meeting its statewide overall DBE goal.

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SECTION 3. AWARD AND EXECUTION OF CONTRACT

The bidder's attention is directed to the provisions in Section 3, "Award and Execution of Contract," of the Standard Specifications and these special provisions for the requirements and conditions concerning award and execution of contract.

A "LOCAL AGENCY BIDDER - DBE INFORMATION" form will be provided by the Agency in the contract documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR Part 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

The successful bidder's "LOCAL AGENCY BIDDER - DBE INFORMATION" form should include the names, addresses and phone numbers of DBE firms that will participate, with a complete description of work or supplies to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A successful bidder certified as a DBE should describe the work it has committed to performing with its own forces as well as any other work that it has committed to be performed by DBE subcontractors, suppliers and trucking companies.

The successful bidder is encouraged to provide written confirmation from each DBE that the DBE is participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the successful bidder is encouraged to submit a copy of the joint venture agreement.

The "LOCAL AGENCY'S BIDDER - DBE INFORMATION" form should be completed and returned to the Agency by the successful bidder with the executed contract and contract bonds.

SECTION 4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

Attention is directed to the provisions in Section 8-1.03, "Beginning of Work," in Section 8-1.06, "Time of Completion," and in Section 8-1.07, "Liquidated Damages," of the Standard Specifications and these special provisions.

The Contractor shall begin work within a ___ calendar days after the contract has been approved by the City/County of _____.

This work shall be diligently prosecuted to completion before the expiration of _____ WORKING DAYS beginning on the ___ calendar day after approval of the contract.

(INSERT AMOUNT OF LIQUIDATED DAMAGES)

The Contractor shall pay to the City/County of _____ the sum of a \$ _____ per day, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

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5-1. SUBCONTRACTOR AND DBE RECORDS. -- The Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be prepared on "Final Report – Utilization of Disadvantaged Business Enterprises - (DBE), First-Tier Subcontractors" (Exhibit 17-F/Form CEM-2402) and certified correct by the Contractor or his authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within 90 days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month. This documentation shall be submitted on "Monthly DBE Trucking Verification" Form CEM-2404(F).

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5-1. __ PERFORMANCE OF SUBCONTRACTORS

The subcontractors listed by the Contractor in conformance with Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications, shall perform the work and supply the materials for which they are listed unless the Contractor has received prior written authorization to perform the work with other forces or to obtain the materials from other sources.

The Contractor should notify the Engineer 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.

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5-1. SUBCONTRACTING

Attention is directed to the provisions in Section 8-1.01, "Subcontracting," and these special provisions. Pursuant to the provisions in Section 1777.1 of the Labor Code, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a subcontractor on a public works project. This list of debarred contractors is available from the Department of Industrial Relations web site at:

<http://www.dir.ca.gov/DLSE/Debar.html>.

The provisions in the third paragraph of Section 8-1.01, "Subcontracting," of the Standard Specifications, that the Contractor shall perform with the Contractor's own organization contract work amounting to not less than 50 percent of the original contract price, *(is or is not)* changed by the Federal Aid requirement specified under "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions that the Contractor perform not less than 30 percent of the original contract work with the Contractor's own organization.

Each subcontract and any lower tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contracts" in Section 14 of these special provisions. Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of the contract.

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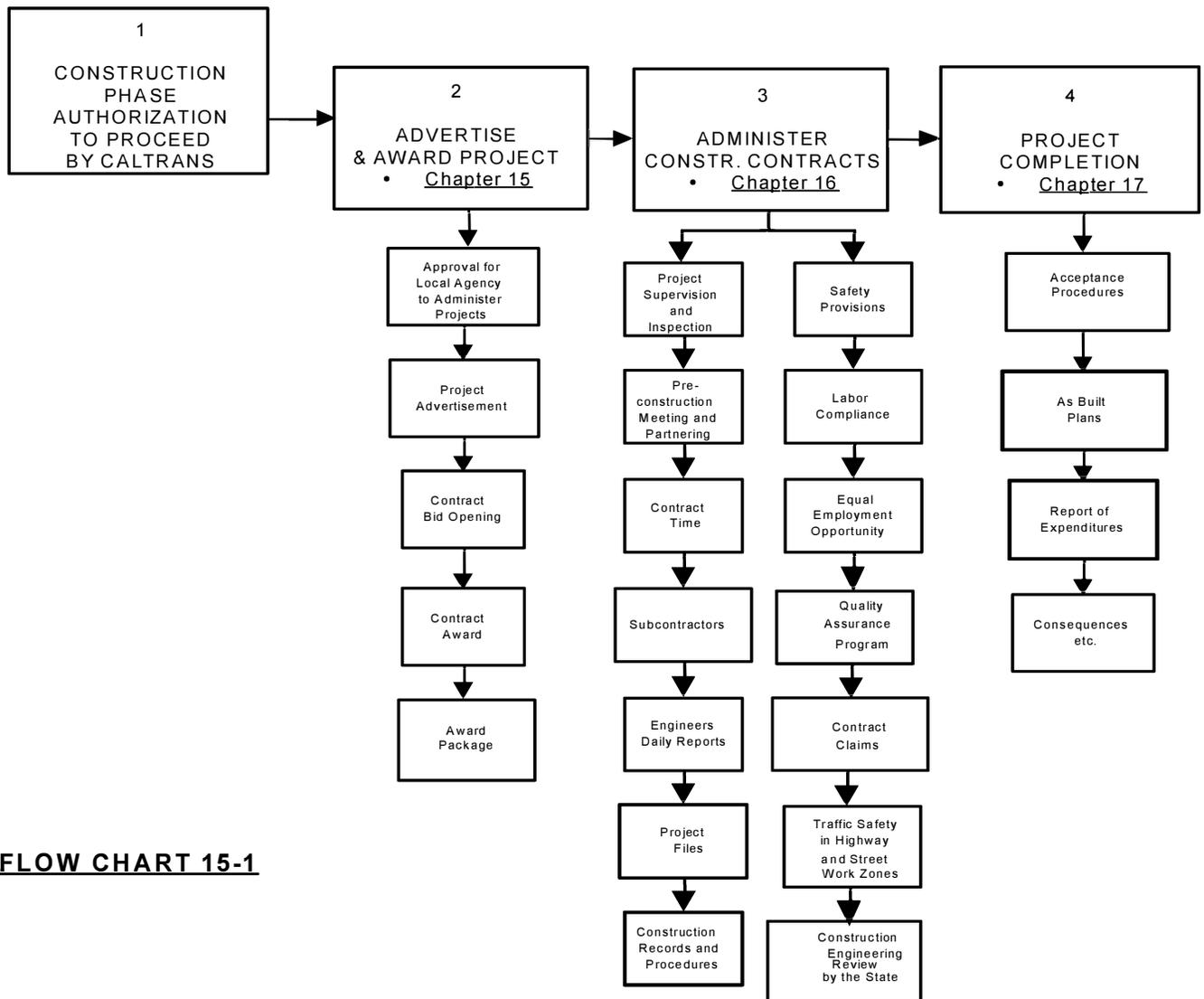
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CHAPTER 15 ADVERTISE AND AWARD PROJECT

15.1 INTRODUCTION

This chapter, Chapter 16, “Administer Construction Contract,” and Chapter 17, “Project Completion,” are for use by local agencies who administer federal-aid construction projects under an “Administering Agency-State Agreement.” These three chapters replace the previously issued *Local Programs Manual, Volume II*, titled “Contract Administration Procedures.” When a locally sponsored project funded with federal-aid is within the state right of way (R/W) and the State (Caltrans) is the administering agency, the state’s *Construction Manual* is normally used.



FLOW CHART 15-1

This chapter covers the activities beginning with advertising of a construction contract and continuing through the bid opening, award, and detail estimate procedures. It has been prepared mainly as a guide for administration of federal-aid contracts by local agencies. Each local agency Resident Engineer should be familiar with the contents of this chapter, Chapter 16, “Administer Construction Contract,” and Chapter 17, “Project Completion” before administering such contracts.

15.2 DEFINITION OF TERMS

- AASHTO - American Association of State Highway and Transportation Officials
- ASTM - American Society for Testing and Materials
- Administering agency - The state or a city, county, other public agency, or nonprofit organizations, that advertises, opens bids, awards and administers the contract. They are frequently called local agency or agency and were previously called responsible agency.
- Bid rigging - a conspiracy to disrupt or circumvent the competitive environment by establishing a competitive advantage for certain bidders.
- CCO - Contract Change Order
- CE - Construction Engineering. This phase includes the work of project advertising¹ through construction, preparation of as-built plans, final estimates, and payments. This phase must be authorized prior to advertising, and CE must be separately identified in this authorization.
- CFR - Code of Federal Regulations
- Contingencies - An amount of funds usually a small percentage of the detail estimate, set aside for unforeseen items or quantities of work not specified in the contract documents, but required to complete the project. The percentage used for contingencies varies depending on the type and scope of work.
- Contract Administration - Includes advertising, opening bids, award, and execution of the contract; control of work and material; and making payments to the contractor.
- Contractor - The person or persons, firm, partnership, corporation, or combination thereof, who have entered into a contract with the administering agency, as party or parties of the second part of his/her or their legal representatives.
- DBE - Disadvantaged Business Enterprise – Sec Chapter 9, Section 9.5
- Department of Transportation - The Department of Transportation of the State of California, as created by law; also referred to as Department, State, or Caltrans.

¹ CE includes advertising only if not included in PE phase and only after authorization date.

- District – A subdivision of the department organized to administer the affairs of the Department for a specific geographical area and for the local agencies in that area (see exhibit 2-A of the LAPM)
- DLA- Division of Local Assistance (Caltrans Headquarters unit only)
- DLAE - The District Local Assistance Engineer, the individual in each district responsible for providing services and assistance to the local agencies.
- E-76 - Federal-aid Program Document titled: “Authorization to Proceed” Form
- EA- Expenditure Authorization number
- EEO - Equal Employment Opportunity
- ERa Emergency Relief
- Finance Letter - A document required by Local Program Accounting (see Exhibit 15-N) and submitted by the administering agency to Caltrans with information required as backup for the federal-aid/state project agreement.
- Full Oversight – Projects on the Interstate that are new or reconstruction (not 3R) greater than \$1 million for which FHWA has Full Oversight.
- FTIPa- Federal Transportation Improvement Program
- FSTIP - Federal Statewide Transportation Improvement Program
- FHWA - Federal Highway Administration
- HPMS - Highway Performance Monitoring System
- Headquarters - The headquarters office of the Department located at 1120 “N” St., Sacramento, CA 95814.
- ISTEA- Intermodal Surface Transportation Efficiency Act of 1991.
- Invoice - A detailed list of expenditures that an administering agency requests reimbursement for with federal funds, pursuant to the Local Agency-State Agreement (see Chapter 5, Exhibit 5-B, “Sample Federal-aid Invoice with Two Appropriations & Different Reimbursement Rates”).
- LRH – Last Resort Housing
- Local agency - A California city, county, or other local public agency. In many instances this term is used loosely to include nonprofit organizations.
- Local Agency-State Agreement - Agreement between the state and local agency. Generally refers to the Master agreement and all supplemental agreements (Program Supplements) to the master agreements. These agreements are required for the state to provide reimbursement to the local agency for all federal-aid projects.

- Locode - Numeric identifier for each local agency or administering agency (assigned by the Division of Local Assistance).
- LPP - Local Programs Procedures. Documents used for the rapid deployment of new procedures and policies between updates of Local Assistance manual, guidelines and programs. Each procedure is numbered according to calendar year and order in which released.
- MPO – Metropolitan Planning Organization
- NHS - National Highway System - A specially Designated Highway System established by the Intermodal Surface Transportation and Efficiency Act of 1991 and adopted by the United States Congress.
- Office Engineer - Chief of the Headquarters or District Office of Office Engineer. The office engineering unit is responsible for insuring that the PS&E is complete, biddable and buildable.
- PS&E - Plans, Specifications & Estimate
- PE - Preliminary Engineering. This phase includes all project initiation and development activities undertaken after its inclusion in the approved FSTIP through the completion of PS&E. It may include preliminary Right of Way engineering and investigations necessary to complete the environmental document.
- Prequalification - The AASHTO defines prequalification as a means of predetermining job experience and work capacity and to identify individuals and organizations from whom the agency may accept a bid. The AASHTO also has encouraged the use of prequalification procedures in its 1981 Suggested Guidelines for Strengthening Bidding and Contract Procedures.
- R/W - Right of Way, This phase includes the work necessary to appraise and acquire project right of way, relocate individuals or businesses, and revise or relocate utilities.
- RAP - Relocation Assistance Program
- Report of Expenditures – Collectively refers to the following final report documents: Final Inspection of Federal-aid Project (FIF 7/96), final Invoice, Final Detail Estimate, Change Order Summary (containing liquidated damages/contractor's claims, date of completion, date of acceptance by City or County), Final Report of Utilization of Disadvantaged Business Enterprise (DBE), Materials Certificate, and Report of Completion of Structures if bridges were constructed.

- State-Authorized Project - A classification for federal-aid projects, which are not subject to FHWA review and oversight required by *Title 23 Code of Federal Regulations*. For State-Authorized federal-aid projects, the FHWA and Caltrans exercises the maximum degree of delegation of authority to local agencies (see Chapter 2, Section 2.4, “Stewardship - Letters of Agreement” and Figure 2-1, “FHWA Oversight”).
- Resident Engineer - A qualified Engineer who is empowered to administer the contract.
- S&H Code - California Streets and Highways Code
- SHA - State Highway Agency (Caltrans)
- Supplemental Work - Work that is anticipated but because of its uncertainty, cannot be included as a contract item e.g., additional staking, utility work, etc. If supplemental work is determined to be needed, a change order is required to include it in the contract. This work should normally be part of the contingencies.
- Surety - A security against loss or damage or for the fulfillment of contract obligation, bond

15.3 APPROVAL FOR LOCAL AGENCY TO ADMINISTER PROJECTS

MAJOR NHS PROJECTS

Caltrans must approve the local agency’s construction administration procedures before a local agency can advertise the construction of a federally financed major NHS project (see Chapter 7 “Field Reviews” for the determination by the DLAE of which NHS projects will be considered major). The procedures should be discussed in general at the field review and detailed written procedures shall be approved by the DLAE before the local agency will be allowed to administer any construction contracts for the project. **Additionally, a local agency shall not advertise the project until it has received in writing an “Authorization to Proceed” with construction from Caltrans (see Chapter 3, “Project Authorization”).**

The written construction administration procedures should cover the following items:

- Construction Management personnel and procedures
- Consultant use and selection
- Project advertisement, bid opening and award procedures
- Pre-Construction Procedures
- Subcontracting
- Traffic Safety procedures
- Materials Testing

- Change order review and approval procedures
- Oversight procedures if a State highway is involved
- Maintenance of records and Access
- Estimates and Progress Payment

The DLAE will consult with Headquarters DLA for assistance with the review and approval of the local agency procedures.

ALL OTHER PROJECTS

Approval by Caltrans of the local agency's construction administration procedures will not be required for all other projects. However, each agency that administers a federal-aid construction project will be required to complete a "Local Agency Construction Contract Administration Checklist" (Exhibit 15-A) before their "Request for Authorization to Proceed with Construction" will be approved. **A local agency shall not advertise a project until it has received in writing an "Authorization to Proceed" with construction from Caltrans (see Chapter 3, "Project Authorization").**

15.4 PROJECT ADVERTISEMENT

INTRODUCTION

Project advertisement may be "locally administered" or "State administered." Whenever a local agency advertises for bids, opens bids, and awards the contract, the project is considered "locally administered." This decision must be made at an early stage of the project, and before final agreement. Federal-aid projects must be advertised by either a local agency authorized to do so or by the State. **The State advertises local agency projects only on an exception basis, and with prior written approval from the District Director.** The written approval is accomplished through the execution of a cooperative agreement between the two agencies. State administered projects usually occur when the project is located on a State highway, and there is a mixture of several fund sources to finance the project construction. If the State agrees to administer a project, the procedures included in the Caltrans *Construction Manual*, Chapter II, Section 2-90, "Local Assistance Projects and Projects Funded by Others," will apply in lieu of the requirements of this manual.

On locally administered projects, the construction engineering is performed by local agency personnel, unless arrangements are made to hire a consultant. If a consultant is used, the local agency must still designate an employee of the agency as the person in responsible charge of the project. The only exception to this procedure is if the administering agency has hired a consultant on retainer to act as the City Engineer or Public Works Director. Then the consultant may act as the person in responsible charge of the project.

Construction engineering for "locally administered" projects shall be performed in accordance with the requirements found in Chapter 16, "Administer Construction Contract" of this manual.

Each local agency and all of its contractors, subcontractors, and vendors shall take all reasonable steps to assure that DBEs have equitable opportunity to compete for and perform contracts (see Chapter 9, “Civil Rights and Disadvantaged Business Enterprises”).

WARNING:

No project shall be advertised for bids, nor shall any project work (by contract or other than contract) be undertaken, and no materials shall be purchased on any federal-aid project, prior to issuance of “Authorization to Proceed” Full Oversight by Caltrans or the FHWA. Violation of this requirement shall result in the project being ineligible for federal funding.

Only one exception to this requirement can be made. It is for emergency relief projects involving emergency repair/opening of a facility. For more information on emergency relief projects see the *Local Assistance Program Guidelines*, Chapter 11, “Disaster Assistance”.

Advertising costs shall be charged to the preliminary engineering work authorization if such authorization has been requested and has been established for the purpose of federal reimbursement.

PROCEDURES

Prior to project advertisement, the administering agency shall certify that their final PS&E package complies with all applicable federal and state regulations and procedures (see Exhibit 12-C “PS&E Certification”). Local agencies should also complete and retain the “Local Agency Project Advertising Checklist” (Exhibit 15-C) in the project files prior to requesting an Authorization to Proceed. All administering agencies must submit a completed “Request for Authorization” with the PS&E Certification before they can receive verification that construction has been authorized by Caltrans.

Upon receipt of “Authorization to Proceed” for construction by Caltrans, the local agency can proceed to advertise the project.

During the advertising period, the administering agency shall notify all prospective bidders of PS&E addenda in the same manner as all other nonfederal-aid projects. For award of federal-aid contracts, the local agency is required to certify that all bidders certify receipt of all addenda. The administering agency shall ensure free and open competition. The advertisement period is determined by the administering agency. A minimum advertisement period of three weeks is recommended for all projects. **For NHS projects a minimum advertisement period of three weeks is required by the FHWA.** The advertising period begins with publication of a “Notice to Contractors” in a newspaper receiving wide local circulation. The Notice shall identify the DBE project availability advisory. The administering agency is responsible to approve and issue all addenda to the PS&E during the advertising period.

The local agency shall assure that all updated estimates are fundable from available local or federal resources.

As soon as the project is advertised, the local agency shall furnish the DLAE with one copy of the “as advertised” plans and special provisions or two copies if structures (bridges) are involved.

15.5 CONTRACT BID OPENING

INTRODUCTION

The contract bid opening is a public forum for the announcement of all bids, and is that point in time where the bids are opened and read aloud. It is also the last moment that bids can be accepted. No bids can be accepted during or after bids are opened. Normally the advertisement/bid documents will state a final time in which bids can be accepted. For the bidder, the reading of the bids confirms whether his bid is successful. For the local agency and the general public, this forum establishes the cost to build the project. The bid opening requirements as outlined below apply to all federal-aid highway construction projects except for the “tabulation of bids requirement,” which does not apply to projects off the NHS.

REQUIREMENTS

FHWA policy requires all bids to be opened publicly and read aloud either item-by-item or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced.

Reasons for not reading a bid include the bid itself being nonresponsive, often called “irregular,” or the bidder is determined to be unreliable. Responsive bid and responsible bidder are defined as:

- A **responsive bid** is one that meets all the requirements of the advertisement and proposal, while
- A **responsible bidder** is one who is physically organized and equipped with the financial ability to undertake and complete the contract.

Some reasons for not reading a bid due to bidding irregularities include:

- Failure to sign the bid
- Failure to furnish the required bid bond
- Failure to include a unit bid price for each item
- Failure to include a total amount for the bid
- Failure to prepare the bid in ink
- Failure to submit a completed addenda certification statement
- Failure to submit a noncollusion affidavit
- Inclusion of conditions or qualifications not provided for in the specifications
- Submission of a materially unbalanced bid

The above examples do not include all possible bidding irregularities. The local agency’s standard specifications govern regarding what constitutes a bidding irregularity. Accordingly, the local agency’s bidding documents should clearly identify those requirements with which the bidder must comply to make the bid responsive.

Just as the bid may be rejected for being irregular or unresponsive, a bid may also be rejected on the grounds that the bidder is not a responsible bidder. A bidder may be deemed not responsible because of past unsatisfactory performance, as evidenced by failure to meet the local agency's qualification requirements, or because of State or federal suspension/debarment action. The administering agency should check to see if a contractor is suspended or debarred from federal contracts. A publication titled, *A Listing of Parties Excluded from Federal Procurement and Nonprocurement Programs* is available electronically via the internet at <http://epls.arnet.gov>.

Note: Contractor's "Debarment and Suspension Certification" is part of the "Notice to Contractors and Special Provisions" boilerplate.

In summary, a successful bid opening should identify the **responsible bidder** submitting the lowest **responsive bid**.

PROCEDURES

The administering agency shall follow its own procedures for bid opening, provided such procedures include:

- As bid proposals are received, they shall be logged in and stamped with the time and date.
- The bids shall be retained in a secure place until the designated time and place for public opening.
- All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount.
- If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the bid opening.
- Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted.

If a local agency elects to prequalify contractors, the agency's prequalification procedures shall not include procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors, which may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. For further discussion on prequalification of bidders see: AASHTO publication on *Suggested Guidelines for Strengthening Bidding and Contract Procedures* (which is available in the FHWA *Contract Administration Core Curriculum*).

The agency's bidding procedures shall not discriminate against any qualified bidder regardless of political boundaries. No bidder shall be required to obtain a license before submitting a bid or before the bid is considered for award of a contract, which includes federal financing; however, a State contractor's license must be obtained upon award of the contract. The local agency may also withhold payment under such contract until such time as the contractor furnishes proof of a proper license in compliance with State laws. No local agency shall bid in competition with, or enter into a subcontract with private contractors. As bid proposals are received, they shall be logged in and stamped with the time and date. The bids shall be retained in a secure place until the designated time and place for public opening.

The administering agency shall retain the following completed documents for the successful bidder in the project file:

- Bidder DBE Information (Exhibit 15-G)
- A list of bidders and total amounts bid with an item-by-item breakdown (see Exhibit 15-D, "Sample Bid Tabulation Summary Sheet") of the three lowest bidders
- The Noncollusion Affidavit (see Chapter 12, "Plans Specifications & Estimate," Exhibit 12-E, Attachment D, "Noncollusion Affidavit")
- A Local Agency Bid Opening Checklist (Exhibit 15-I)

For NHS projects, the local agency shall submit the following to the DLAE (who will transmit it to FHWA headquarters) immediately following the bid opening:

- A letter of "Submission of Bid Tabulation" for all NHS projects (see Exhibit 15-E), (original plus 1 copy).
- A Bid Price Data (FHWA Form-45) for all federal-aid projects where the value of work on the NHS is \$500,000 or more (see Exhibit 15-F), (original plus 1 copy).

Where the lowest bid exceeds the engineer's estimate by an unreasonable amount as defined by established agency procedures, or where competition is considered to be poor for the size, type, and location of project, bids may be rejected unless an award of contract is justified as being in the best interest of the public. See Section 15.6, "Contract Award, Bid Analysis Process," and *FHWA Technical Advisory T 5080.4 (December 29, 1980)*, and *T 5080.6 (December 17, 1982)* for additional information regarding bid reviews. These technical advisories can be found in the appendix to the *US DOT, FHWA pub; Contract Administration Core Curriculum*.

The administering agency shall assure that all bid proposals submitted include a completed addenda certification statement. The addenda certification statement is as follows:

To detect mathematical unbalancing, the unit bid items should be evaluated for reasonable conformance with the engineer's estimate and compared with the other bids received. There are no definitive parameters (e.g., an amount or percent of variance from the engineer's estimate) that constitutes an unbalanced bid. The degree of unbalancing of a bid may depend on the reason for the unbalancing. Mathematically unbalanced bids, although not desirable, may be acceptable.

The determination of mathematically unbalanced bids may be aided by the use of one of the several computer software packages now available. However, the final decision should not preclude the use of engineering judgment. Care must also be exercised to ensure that unit bids for mobilization do not mask unbalancing. Also, "token bids" (i.e., bids with large variations from the engineer's estimate) should be considered as mathematically unbalanced bids and further evaluation and other appropriate steps should be taken to protect the public interest.

There may be situations where the quantity of an item could vary due to inaccuracies in the estimating, errors in the plans, changes in site conditions or design, etc. In such situations, the bids should be further evaluated to determine if the low bidder will ultimately yield the lowest cost. If unbalancing creates reasonable doubt that award would result in the lowest ultimate cost, the bid is materially unbalanced and should be rejected or other steps should be taken to protect the public interest.

AWARD PROCEDURES

The administering agency shall follow its normal procedures for award of the project and is delegated the authority to determine the lowest responsive/responsible bidder without concurrence to award by Caltrans or the FHWA. Written justification shall be included in the project file for all projects that are not awarded to the lowest bidder. The administering agency shall follow its normal procedures for award of the contract and assure that all federal requirements are followed. A bid analysis is not a requirement but is recommended. The administering agency shall retain the executed contract, document the award date, and the Preconstruction conference minutes. The State shall not participate in resolving disputes between the administering agency and its bidders.

It is the responsibility of the administering agency to verify with the DLAE and RTPA/MPO that the appropriate amount of federal funds is authorized before the project is awarded.

POST-AWARD REVIEWS

The administering agency should conduct post-award bid evaluations to assure against bid rigging. An adequate number of projects awarded over a sufficient time period should be evaluated. A period of approximately 5 years should be selected for an initial evaluation to determine if any abnormal competitive bid patterns exist. The following information should be considered in a post-award review for abnormal bid patterns:

- Number of contract awards to a specific firm
- Project bid tabulations
- Firms that submitted a bid and later become a subcontractor on the same project

- Rotation of firms being the successful bidder
- Consistent percentage differential in the bids
- Consistent percentage of the available work in a geographic area to one firm or to several firms over a period of time
- Consistent percentage differential between the successful bid and the engineer's estimate
- Location of the successful bidder's plant versus location of the other bidders' plants
- Variations in unit bid prices submitted by a bidder on different projects in the same bid opening
- Type of work involved
- Number of plans and proposal taken out versus the number of bids submitted
- Any other items that indicate noncompetitive bidding
- On readvertised projects, if the eventual successful bidder was also low bidder on the first letting

TERMINATION OF CONTRACTS

- (a) All NHS contracts exceeding \$10,000 shall contain suitable provisions for termination by the administering agency, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (b) Prior to termination of a federal-aid contract that is subject to FHWA Full Oversight, the administering agency shall consult with and receive the concurrence of the Caltrans DLAE. In addition, for all other federal-aid contracts the administering agency shall notify the DLAE of the termination. The extent of federal-aid participation in contract termination costs, including final settlement, depends on the merits of the individual case. However, under no circumstances shall federal funds participate in anticipated profit for work not performed.
- (c) Except as provided for in paragraph (e) of this section, normal local agency federal-aid plans, specifications, estimates, advertising, and award procedures are to be followed when an administering agency awards the contract for completion of a terminated federal-aid contract.
- (d) When an administering agency awards the contract for completion of a federal-aid contract previously terminated for default, the construction amount eligible for federal participation on the project should not exceed whichever amount is the lesser, either:
 - (1) The amount representing the payments made under the original contract plus payments made under the new contract; or
 - (2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

**LOCAL AGENCY CONSTRUCTION CONTRACT ADMINISTRATION
CHECKLIST**

Local Agency _____

I ADVERTISE AND AWARD PROJECT**A. Project Advertisement**

- Projects are not advertised until the Authorization to Proceed (E-76) for the construction phase has been approved by Caltrans (or by FHWA for Full Oversight projects).
- For NHS projects, a minimum of three weeks for project advertisement (15.4 "Project Advertisement").

B. Contract Bid Opening

- All bids are opened publicly and read aloud either item-by-item, or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced (15.5 "Contract Bid Opening")

The following documents will be completed and retained in the project files.

- For NHS Projects, a list of bidders and total amount bid with an item-by-item breakdown (Exhibit 15-D, "Sample Bid Tabulation Summary Sheet") of the three lowest bidders.
- Bidders' list to be compiled from prime and subcontractors bidding or quoting on contract.
- EEO Certification (Exhibit 12-E, Attachment C), The Noncollusion Affidavit (Exhibit 12-E, Attachment D), Non-Lobbying Certification (Exhibit 12-E, Attachment F), Disclosure of Lobbying Activities (Exhibit 12-E, Attachment G)
- Local Agency Bid Opening Checklist (Exhibit 15-I)

C. Contract Award

- Contracts are awarded on the basis of the lowest responsive bid from a responsible bidder (15.6 "Contract Award").
- For all NHS projects, a bid analysis will be performed (15.6 "Contract Award").
- No negotiations with contractor occurred prior to award (not allowed).
- Local Agency-Bidder DBE Information Sheet (Exhibit 15-G) to be submitted by successful bidder.

The following documents will be forwarded to the Caltrans District Local Assistance Engineer immediately after award of the contract:

- Contract Award Checklist (Exhibit 15-L)
- Detail Estimate (Exhibit 15-M)
- Finance Letter
- RE's Checklist

D. Subcontracting

- For all NHS projects, at least 30% of the contract work is to be performed by the prime contractor (see Chapter 16, Section 16.6 "Subcontractors")

Local agency's person in "Responsible Charge"

(date)

Distribution: Original Local Agency Project File
One copy - DLAE

RESIDENT ENGINEER'S CONSTRUCTION CONTRACT ADMINISTRATION CHECKLIST

This form is to be completed and signed by the local agency's Resident Engineer, and submitted with Local agency's Award Package

This form was created to help local agency Resident Engineers with the administration of the federal-aid projects. This list does not contain all the Federal-aid requirements for administration of federal-aid projects. Resident Engineers are advised to review the *Local Assistance Procedures Manual* to be familiar with all the federal-aid requirements.

This form shall be used as reference if the local agency's federal-aid project is subject to a Process Review.

Local Agency Name _____

Federal-aid Project No. _____

1. Contract Staffing:

Names and titles of all staff assigned to the contract shall be in the contract files and shall be adequate (see Chapter 16, Section 16.3 "Project Supervision and Inspection").

Date of Preconstruction Conference (Attendees list in contract file) _____

2. Authorization:

Date of the "Authorization to Proceed with Construction" _____
(Shall be prior to date project was advertised)

Date the project was advertised _____

3. Contract Files:

Files shall be in an established order and separate from other contracts (see Chapter 16, Section 16.8 "Project Files").

Check one of the following: Index used on this project is Local agency's standard for all jobs, or
 For federal-aid jobs only.

4. Resident Engineer's/Construction Inspectors Daily Diaries:

Shall be current, thorough and neat with detailed information on all work performed (see Chapter 16, Section 16.7 "Engineer's Daily Reports").

5. Construction Records and Accounting Procedures:

Detail Estimate(s) and Finance Letter(s) are in the project files.

Amount of federal-aid funds encumbered for the project, _____

Program Supplemental Agreement is in the project files.

Distribution: 1. Local Agency Project File 2. DLAE (please put on first page only)

- There shall be source documents supporting progress payments made to contractor.
- There shall be separate item sheets for each contract item paid.
- There shall be a procedure for Administrative or Labor Compliance deductions.
- Invoices to the State shall match progress payments made to the contractor.
- 6. Contract Time:**
 - A method shall be established to determine contract time (see Chapter 16, Section 16.5 "Contract Time").
- 7. Labor Compliance:**
 - Certified payrolls shall be spot-checked against daily diaries and prevailing wages (see Chapter 16, Section 16.11 "Labor Compliance").
Local agency's Labor Compliance Officer, _____
- 8. EEO:**
 - Maintain records to ensure EEO requirements are performed and documented in contract record (see Chapter 16, Section 16.12 "Equal Employment Opportunity").

Local agency's EEO Compliance Officer, _____
- 9. EEO/Wage Rate/False Statements Posters:**
 - Federal posters shall be posted for every worker to see at, or near, the contractor's office at the construction site or at the workers central gathering point.
- 10. Employee Interviews:**
 - There shall be employee interviews conducted (see Chapter 16, Exhibit 16-N).
- 11. OJT:**
 - Are OJT requirements included in the contract, yes no .
 - If yes, documentation will be retained in project files to account for the apprentices on the job.
- 12. DBE:**
 - Local agency's Annual Anticipated DBE Participation Level,
 - Local agency's DBE Liaison Officer, _____
 - *Contractor's completed Local Agency Bidder-DBE-Information Form (Exhibit 15-G) in project files.
 - *Contract DBE availability advisory percentage for this project
 - *Contractor has been provided "Monthly DBE Trucking Verification" Form (see Chapter 16, Exhibit 16-Z)

LOCAL AGENCY PROJECT ADVERTISING CHECKLIST

Project# _____
DIST-----CO-----RTE-----PM-----Agency

Federal Project# _____

Location: _____

Limits: _____

	<u>YES</u>	<u>NO</u>	<u>NOT APPLICABLE</u>
PS&E Review	[]	[]	[]
Are the following complete?			
Environmental measures incorporated?	[]	[]	[]
Right of Way Certification.	[]	[]	[]
Design	[]	[]	[]
Traffic (Electrical/Signing/Striping)	[]	[]	[]
Materials	[]	[]	[]
Landscaping	[]	[]	[]
Hydraulics	[]	[]	[]
Permits	[]	[]	[]
Bridge Plans	[]	[]	[]
Are all encroachments permits obtained?	[]	[]	[]
Are design exceptions approved?	[]	[]	[]
Is material testing and sampling arranged?	[]	[]	[]
DBE Annual Submittal Form approved?	[]	[]	[]
Is there force account work for this project?	[]	[]	[]
Is agency furnished material approved?	[]	[]	[]
Are the federal funds for construction authorized ?	[]	[]	[]
Has a fund allocation been approved by the California Transportation Commission (if required)?	[]	[]	[]
Have a complete set of Plans and Special Provisions been sent to the Caltrans District Local Assistance Engineer (two copies if structures (bridges) are involved)?	[]	[]	[]
How long is the advertisement period? _____			

Reviewed by: _____
(Name of Local Agency Representative)

Title: _____

Date: _____

Distribution: Local Agency Project File

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**INSTRUCTIONS - LOCAL AGENCY BIDDER-DBE (CONSTRUCTION CONTRACTS)
INFORMATION FORM (Revised 08/04)**

The form requires specific information regarding the construction contract: Agency, Location, Project Descriptions, Contract Number (assigned by local agency), Federal Aid Project Number (assigned by Caltrans-Local Assistance), Total Dollar Contract Amount, Bid Date, Bidder's Name and Advertised DBE Contract Availability Advisory.

The form has a column for the Contract Item Number (or Item No's) and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. The DBE should provide a certification number to the Contractor. Notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (must be certified on the date bids are opened and include DBE address and phone number).

There is a column for the total DBE dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.)

Exhibit 15-G must be signed and dated by the person bidding. Also list a phone number in the space provided and print the name of the person to contact.

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LOCAL AGENCY BID OPENING CHECKLIST

Project Information: _____
DIST-----CO-----RTE-----PM-----Agency

Federal Project Number: _____

Location: _____

Limits: _____

Bid opening date and time	_____
Bid opening by	Name: _____
Bids publicly opened and read aloud?	_____ (Yes/No)
Addenda certified by	_____
Advertisement date	_____
Engineers Estimate Compared?	_____ (Yes/No)
Low Bidder Name	_____
Amount	_____
Number of Bidders	_____
Bid irregularities?	_____ (Yes/No)
Noncollusion affidavit included (Exhibit 12-E, Attachment D)?	_____ (Yes/No)
Low Bid signed?	_____ (Yes/No)
All Addenda certified by all bidders?	_____ (Yes/No)

Reviewed by: _____
(Name of Local Agency Representative)

Title: _____

Date: _____

Distribution: Original- Local Agency Project File

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LOCAL AGENCY CONTRACT AWARD CHECKLIST

Project Sponsor: _____

Federal-aid project#: _____

Location: _____
DIST-----CO----- (Road/Street or RTE)-----PM-----Agency

Limits: _____
(Physical limits reference postmiles or intersections)

Has Caltrans issued an "Authorization to Proceed" in writing with federal funds included for construction? and is the amount correct?	_____	(yes/no)
Copy of engineers estimate:	_____	to be attached
Is material testing and sampling arranged?	_____	(yes/no)
Copy of low bidder's proposal:	_____	to be attached
Low Bid signed in ink?	_____	(yes/no)
Local Agency DBE Information Sheet included (Exhibit 15-G).....	_____	to be attached
Is the Noncollusion Affidavit (Chapter 12, "PS&E," Exhibit 12-F) signed and included in the low bidders proposal?	_____	(yes/no)
Is the Bid summary (itemized bids for 3 lowest bidders) complete?	_____	(yes/no)
Addendum procedures adhered to?	_____	(yes/no)
TIP information, Authorized amount.....	_____	\$ amount
Include TIP page number or amendment number here:	_____	
Bid opening procedures were adhered to?:	_____	(yes/no)
Date DLA's Federal Wage Rate website was checked for updates	_____	date
Date of bid opening	_____	date
Date of award:	_____	date
Amount of award:	_____	\$ amount
Detail Estimate (Exhibit 15-M):	_____	to be attached
Finance Letter (Exhibit 15-N):	_____	to be attached
Resident Engineer's Construction Contract Administration Checklist.....	_____	to be attached
Is successful bidder licensed?	_____	(yes/no)

Reviewed by: _____
(Signature of local agency Representative)

(Name printed or typed)

Title: _____

Date: _____

Phone Number: _____

NOTE: If the answer is no to any of the above questions, a letter of explanation is required. The DLAE shall review the explanation and determine if the local agency is eligible for federal funds.

Distribution: All NHS Projects: (1) Original + 1 copy-Caltrans District Local Assistance Engineer . (2) Copy-Local Agency Project File

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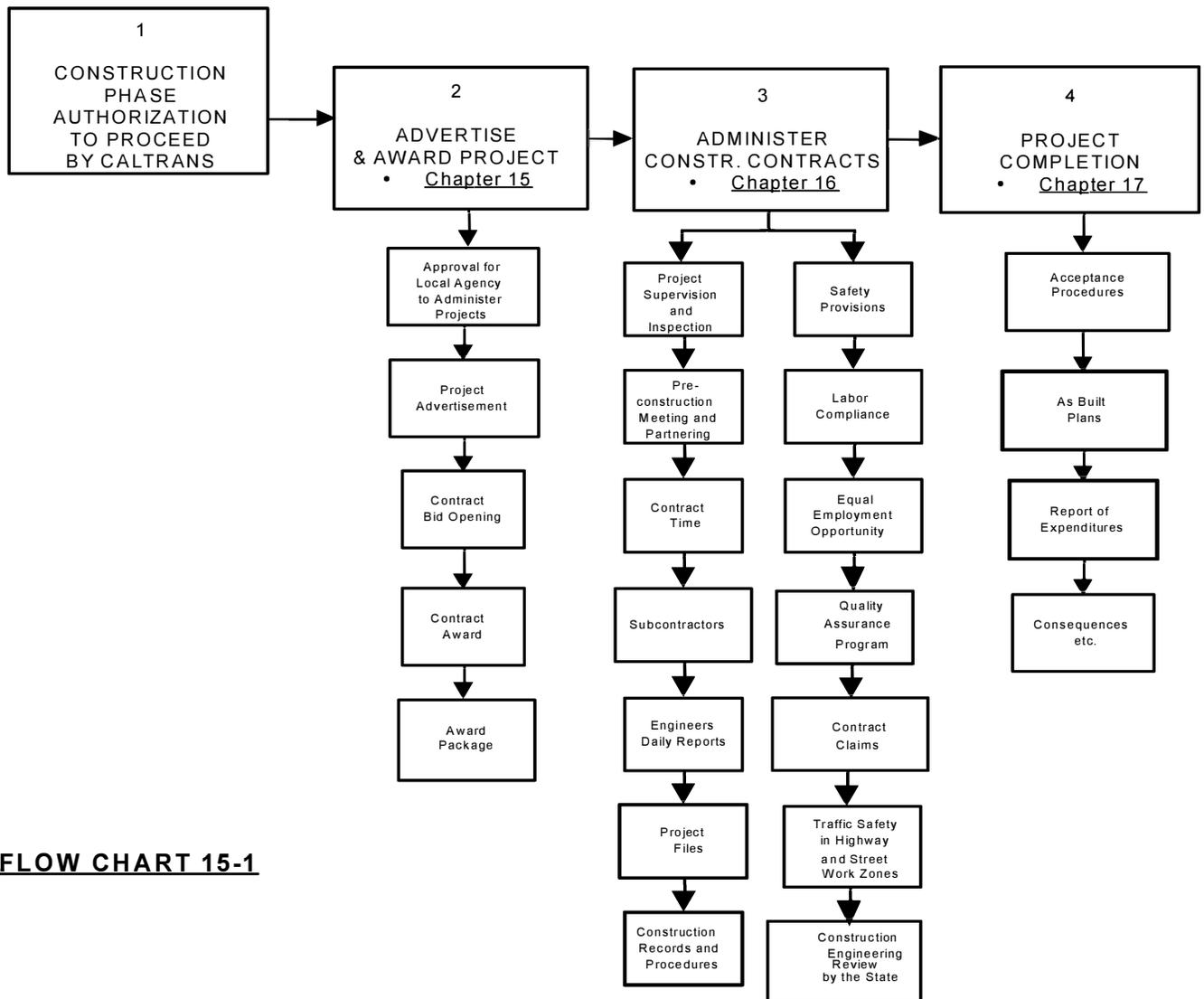
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CHAPTER 15 ADVERTISE AND AWARD PROJECT

15.1 INTRODUCTION

This chapter, Chapter 16, “Administer Construction Contract,” and Chapter 17, “Project Completion,” are for use by local agencies who administer federal-aid construction projects under an “Administering Agency-State Agreement.” These three chapters replace the previously issued *Local Programs Manual, Volume II*, titled “Contract Administration Procedures.” When a locally sponsored project funded with federal-aid is within the state right of way (R/W) and the State (Caltrans) is the administering agency, the state’s *Construction Manual* is normally used.



FLOW CHART 15-1

This chapter covers the activities beginning with advertising of a construction contract and continuing through the bid opening, award, and detail estimate procedures. It has been prepared mainly as a guide for administration of federal-aid contracts by local agencies. Each local agency Resident Engineer should be familiar with the contents of this chapter, Chapter 16, “Administer Construction Contract,” and Chapter 17, “Project Completion” before administering such contracts.

15.2 DEFINITION OF TERMS

- AASHTO - American Association of State Highway and Transportation Officials
- ASTM - American Society for Testing and Materials
- Administering agency - The state or a city, county, other public agency, or nonprofit organizations, that advertises, opens bids, awards and administers the contract. They are frequently called local agency or agency and were previously called responsible agency.
- Bid rigging - a conspiracy to disrupt or circumvent the competitive environment by establishing a competitive advantage for certain bidders.
- CCO - Contract Change Order
- CE - Construction Engineering. This phase includes the work of project advertising¹ through construction, preparation of as-built plans, final estimates, and payments. This phase must be authorized prior to advertising, and CE must be separately identified in this authorization.
- CFR - Code of Federal Regulations
- Contingencies - An amount of funds usually a small percentage of the detail estimate, set aside for unforeseen items or quantities of work not specified in the contract documents, but required to complete the project. The percentage used for contingencies varies depending on the type and scope of work.
- Contract Administration - Includes advertising, opening bids, award, and execution of the contract; control of work and material; and making payments to the contractor.
- Contractor - The person or persons, firm, partnership, corporation, or combination thereof, who have entered into a contract with the administering agency, as party or parties of the second part of his/her or their legal representatives.
- DBE - Disadvantaged Business Enterprise – Sec Chapter 9, Section 9.5
- Department of Transportation - The Department of Transportation of the State of California, as created by law; also referred to as Department, State, or Caltrans.

¹ CE includes advertising only if not included in PE phase and only after authorization date.

- District – A subdivision of the department organized to administer the affairs of the Department for a specific geographical area and for the local agencies in that area (see exhibit 2-A of the LAPM)
- DLA- Division of Local Assistance (Caltrans Headquarters unit only)
- DLAE - The District Local Assistance Engineer, the individual in each district responsible for providing services and assistance to the local agencies.
- E-76 - Federal-aid Program Document titled: “Authorization to Proceed” Form
- EA- Expenditure Authorization number
- EEO - Equal Employment Opportunity
- ERa Emergency Relief
- Finance Letter - A document required by Local Program Accounting (see Exhibit 15-N) and submitted by the administering agency to Caltrans with information required as backup for the federal-aid/state project agreement.
- Full Oversight – Projects on the Interstate that are new or reconstruction (not 3R) greater than \$1 million for which FHWA has Full Oversight.
- FTIPa- Federal Transportation Improvement Program
- FSTIP - Federal Statewide Transportation Improvement Program
- FHWA - Federal Highway Administration
- HPMS - Highway Performance Monitoring System
- Headquarters - The headquarters office of the Department located at 1120 “N” St., Sacramento, CA 95814.
- ISTEA- Intermodal Surface Transportation Efficiency Act of 1991.
- Invoice - A detailed list of expenditures that an administering agency requests reimbursement for with federal funds, pursuant to the Local Agency-State Agreement (see Chapter 5, Exhibit 5-B, “Sample Federal-aid Invoice with Two Appropriations & Different Reimbursement Rates”).
- LRH – Last Resort Housing
- Local agency - A California city, county, or other local public agency. In many instances this term is used loosely to include nonprofit organizations.
- Local Agency-State Agreement - Agreement between the state and local agency. Generally refers to the Master agreement and all supplemental agreements (Program Supplements) to the master agreements. These agreements are required for the state to provide reimbursement to the local agency for all federal-aid projects.

- Locode - Numeric identifier for each local agency or administering agency (assigned by the Division of Local Assistance).
- LPP - Local Programs Procedures. Documents used for the rapid deployment of new procedures and policies between updates of Local Assistance manual, guidelines and programs. Each procedure is numbered according to calendar year and order in which released.
- MPO – Metropolitan Planning Organization
- NHS - National Highway System - A specially Designated Highway System established by the Intermodal Surface Transportation and Efficiency Act of 1991 and adopted by the United States Congress.
- Office Engineer - Chief of the Headquarters or District Office of Office Engineer. The office engineering unit is responsible for insuring that the PS&E is complete, biddable and buildable.
- PS&E - Plans, Specifications & Estimate
- PE - Preliminary Engineering. This phase includes all project initiation and development activities undertaken after its inclusion in the approved FSTIP through the completion of PS&E. It may include preliminary Right of Way engineering and investigations necessary to complete the environmental document.
- Prequalification - The AASHTO defines prequalification as a means of predetermining job experience and work capacity and to identify individuals and organizations from whom the agency may accept a bid. The AASHTO also has encouraged the use of prequalification procedures in its 1981 Suggested Guidelines for Strengthening Bidding and Contract Procedures.
- R/W - Right of Way, This phase includes the work necessary to appraise and acquire project right of way, relocate individuals or businesses, and revise or relocate utilities.
- RAP - Relocation Assistance Program
- Report of Expenditures – Collectively refers to the following final report documents: Final Inspection of Federal-aid Project (FIF 7/96), final Invoice, Final Detail Estimate, Change Order Summary (containing liquidated damages/contractor's claims, date of completion, date of acceptance by City or County), Final Report of Utilization of Disadvantaged Business Enterprise (DBE), Materials Certificate, and Report of Completion of Structures if bridges were constructed.

- State-Authorized Project - A classification for federal-aid projects, which are not subject to FHWA review and oversight required by *Title 23 Code of Federal Regulations*. For State-Authorized federal-aid projects, the FHWA and Caltrans exercises the maximum degree of delegation of authority to local agencies (see Chapter 2, Section 2.4, “Stewardship - Letters of Agreement” and Figure 2-1, “FHWA Oversight”).
- Resident Engineer - A qualified Engineer who is empowered to administer the contract.
- S&H Code - California Streets and Highways Code
- SHA - State Highway Agency (Caltrans)
- Supplemental Work - Work that is anticipated but because of its uncertainty, cannot be included as a contract item e.g., additional staking, utility work, etc. If supplemental work is determined to be needed, a change order is required to include it in the contract. This work should normally be part of the contingencies.
- Surety - A security against loss or damage or for the fulfillment of contract obligation, bond

15.3 APPROVAL FOR LOCAL AGENCY TO ADMINISTER PROJECTS

MAJOR NHS PROJECTS

Caltrans must approve the local agency’s construction administration procedures before a local agency can advertise the construction of a federally financed major NHS project (see Chapter 7 “Field Reviews” for the determination by the DLAE of which NHS projects will be considered major). The procedures should be discussed in general at the field review and detailed written procedures shall be approved by the DLAE before the local agency will be allowed to administer any construction contracts for the project. **Additionally, a local agency shall not advertise the project until it has received in writing an “Authorization to Proceed” with construction from Caltrans (see Chapter 3, “Project Authorization”).**

The written construction administration procedures should cover the following items:

- Construction Management personnel and procedures
- Consultant use and selection
- Project advertisement, bid opening and award procedures
- Pre-Construction Procedures
- Subcontracting
- Traffic Safety procedures
- Materials Testing

- Change order review and approval procedures
- Oversight procedures if a State highway is involved
- Maintenance of records and Access
- Estimates and Progress Payment

The DLAE will consult with Headquarters DLA for assistance with the review and approval of the local agency procedures.

ALL OTHER PROJECTS

Approval by Caltrans of the local agency's construction administration procedures will not be required for all other projects. However, each agency that administers a federal-aid construction project will be required to complete a "Local Agency Construction Contract Administration Checklist" (Exhibit 15-A) before their "Request for Authorization to Proceed with Construction" will be approved. **A local agency shall not advertise a project until it has received in writing an "Authorization to Proceed" with construction from Caltrans (see Chapter 3, "Project Authorization").**

15.4 PROJECT ADVERTISEMENT

INTRODUCTION

Project advertisement may be "locally administered" or "State administered." Whenever a local agency advertises for bids, opens bids, and awards the contract, the project is considered "locally administered." This decision must be made at an early stage of the project, and before final agreement. Federal-aid projects must be advertised by either a local agency authorized to do so or by the State. **The State advertises local agency projects only on an exception basis, and with prior written approval from the District Director.** The written approval is accomplished through the execution of a cooperative agreement between the two agencies. State administered projects usually occur when the project is located on a State highway, and there is a mixture of several fund sources to finance the project construction. If the State agrees to administer a project, the procedures included in the Caltrans *Construction Manual*, Chapter II, Section 2-90, "Local Assistance Projects and Projects Funded by Others," will apply in lieu of the requirements of this manual.

On locally administered projects, the construction engineering is performed by local agency personnel, unless arrangements are made to hire a consultant. If a consultant is used, the local agency must still designate an employee of the agency as the person in responsible charge of the project. The only exception to this procedure is if the administering agency has hired a consultant on retainer to act as the City Engineer or Public Works Director. Then the consultant may act as the person in responsible charge of the project.

Construction engineering for "locally administered" projects shall be performed in accordance with the requirements found in Chapter 16, "Administer Construction Contract" of this manual.

Each local agency and all of its contractors, subcontractors, and vendors shall take all reasonable steps to assure that DBEs have equitable opportunity to compete for and perform contracts (see Chapter 9, “Civil Rights and Disadvantaged Business Enterprises”).

WARNING:

No project shall be advertised for bids, nor shall any project work (by contract or other than contract) be undertaken, and no materials shall be purchased on any federal-aid project, prior to issuance of “Authorization to Proceed” Full Oversight by Caltrans or the FHWA. Violation of this requirement shall result in the project being ineligible for federal funding.

Only one exception to this requirement can be made. It is for emergency relief projects involving emergency repair/opening of a facility. For more information on emergency relief projects see the *Local Assistance Program Guidelines*, Chapter 11, “Disaster Assistance”.

Advertising costs shall be charged to the preliminary engineering work authorization if such authorization has been requested and has been established for the purpose of federal reimbursement.

PROCEDURES

Prior to project advertisement, the administering agency shall certify that their final PS&E package complies with all applicable federal and state regulations and procedures (see Exhibit 12-C “PS&E Certification”). Local agencies should also complete and retain the “Local Agency Project Advertising Checklist” (Exhibit 15-C) in the project files prior to requesting an Authorization to Proceed. All administering agencies must submit a completed “Request for Authorization” with the PS&E Certification before they can receive verification that construction has been authorized by Caltrans.

Upon receipt of “Authorization to Proceed” for construction by Caltrans, the local agency can proceed to advertise the project.

During the advertising period, the administering agency shall notify all prospective bidders of PS&E addenda in the same manner as all other nonfederal-aid projects. For award of federal-aid contracts, the local agency is required to certify that all bidders certify receipt of all addenda. The administering agency shall ensure free and open competition. The advertisement period is determined by the administering agency. A minimum advertisement period of three weeks is recommended for all projects. **For NHS projects a minimum advertisement period of three weeks is required by the FHWA.** The advertising period begins with publication of a “Notice to Contractors” in a newspaper receiving wide local circulation. The Notice shall identify the DBE project availability advisory. The administering agency is responsible to approve and issue all addenda to the PS&E during the advertising period.

The local agency shall assure that all updated estimates are fundable from available local or federal resources.

As soon as the project is advertised, the local agency shall furnish the DLAE with one copy of the “as advertised” plans and special provisions or two copies if structures (bridges) are involved.

15.5 CONTRACT BID OPENING

INTRODUCTION

The contract bid opening is a public forum for the announcement of all bids, and is that point in time where the bids are opened and read aloud. It is also the last moment that bids can be accepted. No bids can be accepted during or after bids are opened. Normally the advertisement/bid documents will state a final time in which bids can be accepted. For the bidder, the reading of the bids confirms whether his bid is successful. For the local agency and the general public, this forum establishes the cost to build the project. The bid opening requirements as outlined below apply to all federal-aid highway construction projects except for the “tabulation of bids requirement,” which does not apply to projects off the NHS.

REQUIREMENTS

FHWA policy requires all bids to be opened publicly and read aloud either item-by-item or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced.

Reasons for not reading a bid include the bid itself being nonresponsive, often called “irregular,” or the bidder is determined to be unreliable. Responsive bid and responsible bidder are defined as:

- A **responsive bid** is one that meets all the requirements of the advertisement and proposal, while
- A **responsible bidder** is one who is physically organized and equipped with the financial ability to undertake and complete the contract.

Some reasons for not reading a bid due to bidding irregularities include:

- Failure to sign the bid
- Failure to furnish the required bid bond
- Failure to include a unit bid price for each item
- Failure to include a total amount for the bid
- Failure to prepare the bid in ink
- Failure to submit a completed addenda certification statement
- Failure to submit a noncollusion affidavit
- Inclusion of conditions or qualifications not provided for in the specifications
- Submission of a materially unbalanced bid

The above examples do not include all possible bidding irregularities. The local agency’s standard specifications govern regarding what constitutes a bidding irregularity. Accordingly, the local agency’s bidding documents should clearly identify those requirements with which the bidder must comply to make the bid responsive.

Just as the bid may be rejected for being irregular or unresponsive, a bid may also be rejected on the grounds that the bidder is not a responsible bidder. A bidder may be deemed not responsible because of past unsatisfactory performance, as evidenced by failure to meet the local agency's qualification requirements, or because of State or federal suspension/debarment action. The administering agency should check to see if a contractor is suspended or debarred from federal contracts. A publication titled, *A Listing of Parties Excluded from Federal Procurement and Nonprocurement Programs* is available electronically via the internet at <http://epls.arnet.gov>.

Note: Contractor's "Debarment and Suspension Certification" is part of the "Notice to Contractors and Special Provisions" boilerplate.

In summary, a successful bid opening should identify the **responsible bidder** submitting the lowest **responsive bid**.

PROCEDURES

The administering agency shall follow its own procedures for bid opening, provided such procedures include:

- As bid proposals are received, they shall be logged in and stamped with the time and date.
- The bids shall be retained in a secure place until the designated time and place for public opening.
- All bids received in accordance with the terms of the advertisement shall be publicly opened and announced either item by item or by total amount.
- If any bid received is not read aloud, the name of the bidder and the reason for not reading the bid aloud shall be publicly announced at the bid opening.
- Negotiation with contractors, during the period following the opening of bids and before the award of the contract shall not be permitted.

If a local agency elects to prequalify contractors, the agency's prequalification procedures shall not include procedures or requirements for bonding, insurance, prequalification, qualification, or licensing of contractors, which may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating. For further discussion on prequalification of bidders see: AASHTO publication on *Suggested Guidelines for Strengthening Bidding and Contract Procedures* (which is available in the FHWA *Contract Administration Core Curriculum*).

The agency's bidding procedures shall not discriminate against any qualified bidder regardless of political boundaries. No bidder shall be required to obtain a license before submitting a bid or before the bid is considered for award of a contract, which includes federal financing; however, a State contractor's license must be obtained upon award of the contract. The local agency may also withhold payment under such contract until such time as the contractor furnishes proof of a proper license in compliance with State laws. No local agency shall bid in competition with, or enter into a subcontract with private contractors. As bid proposals are received, they shall be logged in and stamped with the time and date. The bids shall be retained in a secure place until the designated time and place for public opening.

The administering agency shall retain the following completed documents for the successful bidder in the project file:

- Bidder DBE Information (Exhibit 15-G)
- A list of bidders and total amounts bid with an item-by-item breakdown (see Exhibit 15-D, "Sample Bid Tabulation Summary Sheet") of the three lowest bidders
- The Noncollusion Affidavit (see Chapter 12, "Plans Specifications & Estimate," Exhibit 12-E, Attachment D, "Noncollusion Affidavit")
- A Local Agency Bid Opening Checklist (Exhibit 15-I)

For NHS projects, the local agency shall submit the following to the DLAE (who will transmit it to FHWA headquarters) immediately following the bid opening:

- A letter of "Submission of Bid Tabulation" for all NHS projects (see Exhibit 15-E), (original plus 1 copy).
- A Bid Price Data (FHWA Form-45) for all federal-aid projects where the value of work on the NHS is \$500,000 or more (see Exhibit 15-F), (original plus 1 copy).

Where the lowest bid exceeds the engineer's estimate by an unreasonable amount as defined by established agency procedures, or where competition is considered to be poor for the size, type, and location of project, bids may be rejected unless an award of contract is justified as being in the best interest of the public. See Section 15.6, "Contract Award, Bid Analysis Process," and *FHWA Technical Advisory T 5080.4 (December 29, 1980)*, and *T 5080.6 (December 17, 1982)* for additional information regarding bid reviews. These technical advisories can be found in the appendix to the *US DOT, FHWA pub; Contract Administration Core Curriculum*.

The administering agency shall assure that all bid proposals submitted include a completed addenda certification statement. The addenda certification statement is as follows:

To detect mathematical unbalancing, the unit bid items should be evaluated for reasonable conformance with the engineer's estimate and compared with the other bids received. There are no definitive parameters (e.g., an amount or percent of variance from the engineer's estimate) that constitutes an unbalanced bid. The degree of unbalancing of a bid may depend on the reason for the unbalancing. Mathematically unbalanced bids, although not desirable, may be acceptable.

The determination of mathematically unbalanced bids may be aided by the use of one of the several computer software packages now available. However, the final decision should not preclude the use of engineering judgment. Care must also be exercised to ensure that unit bids for mobilization do not mask unbalancing. Also, "token bids" (i.e., bids with large variations from the engineer's estimate) should be considered as mathematically unbalanced bids and further evaluation and other appropriate steps should be taken to protect the public interest.

There may be situations where the quantity of an item could vary due to inaccuracies in the estimating, errors in the plans, changes in site conditions or design, etc. In such situations, the bids should be further evaluated to determine if the low bidder will ultimately yield the lowest cost. If unbalancing creates reasonable doubt that award would result in the lowest ultimate cost, the bid is materially unbalanced and should be rejected or other steps should be taken to protect the public interest.

AWARD PROCEDURES

The administering agency shall follow its normal procedures for award of the project and is delegated the authority to determine the lowest responsive/responsible bidder without concurrence to award by Caltrans or the FHWA. Written justification shall be included in the project file for all projects that are not awarded to the lowest bidder. The administering agency shall follow its normal procedures for award of the contract and assure that all federal requirements are followed. A bid analysis is not a requirement but is recommended. The administering agency shall retain the executed contract, document the award date, and the Preconstruction conference minutes. The State shall not participate in resolving disputes between the administering agency and its bidders.

It is the responsibility of the administering agency to verify with the DLAE and RTPA/MPO that the appropriate amount of federal funds is authorized before the project is awarded.

POST-AWARD REVIEWS

The administering agency should conduct post-award bid evaluations to assure against bid rigging. An adequate number of projects awarded over a sufficient time period should be evaluated. A period of approximately 5 years should be selected for an initial evaluation to determine if any abnormal competitive bid patterns exist. The following information should be considered in a post-award review for abnormal bid patterns:

- Number of contract awards to a specific firm
- Project bid tabulations
- Firms that submitted a bid and later become a subcontractor on the same project

- Rotation of firms being the successful bidder
- Consistent percentage differential in the bids
- Consistent percentage of the available work in a geographic area to one firm or to several firms over a period of time
- Consistent percentage differential between the successful bid and the engineer's estimate
- Location of the successful bidder's plant versus location of the other bidders' plants
- Variations in unit bid prices submitted by a bidder on different projects in the same bid opening
- Type of work involved
- Number of plans and proposal taken out versus the number of bids submitted
- Any other items that indicate noncompetitive bidding
- On readvertised projects, if the eventual successful bidder was also low bidder on the first letting

TERMINATION OF CONTRACTS

- (a) All NHS contracts exceeding \$10,000 shall contain suitable provisions for termination by the administering agency, including the manner by which the termination will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (b) Prior to termination of a federal-aid contract that is subject to FHWA Full Oversight, the administering agency shall consult with and receive the concurrence of the Caltrans DLAE. In addition, for all other federal-aid contracts the administering agency shall notify the DLAE of the termination. The extent of federal-aid participation in contract termination costs, including final settlement, depends on the merits of the individual case. However, under no circumstances shall federal funds participate in anticipated profit for work not performed.
- (c) Except as provided for in paragraph (e) of this section, normal local agency federal-aid plans, specifications, estimates, advertising, and award procedures are to be followed when an administering agency awards the contract for completion of a terminated federal-aid contract.
- (d) When an administering agency awards the contract for completion of a federal-aid contract previously terminated for default, the construction amount eligible for federal participation on the project should not exceed whichever amount is the lesser, either:
 - (1) The amount representing the payments made under the original contract plus payments made under the new contract; or
 - (2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.

**LOCAL AGENCY CONSTRUCTION CONTRACT ADMINISTRATION
CHECKLIST**

Local Agency _____

I ADVERTISE AND AWARD PROJECT**A. Project Advertisement**

- Projects are not advertised until the Authorization to Proceed (E-76) for the construction phase has been approved by Caltrans (or by FHWA for Full Oversight projects).
- For NHS projects, a minimum of three weeks for project advertisement (15.4 "Project Advertisement").

B. Contract Bid Opening

- All bids are opened publicly and read aloud either item-by-item, or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced (15.5 "Contract Bid Opening")

The following documents will be completed and retained in the project files.

- For NHS Projects, a list of bidders and total amount bid with an item-by-item breakdown (Exhibit 15-D, "Sample Bid Tabulation Summary Sheet") of the three lowest bidders.
- Bidders' list to be compiled from prime and subcontractors bidding or quoting on contract.
- EEO Certification (Exhibit 12-E, Attachment C), The Noncollusion Affidavit (Exhibit 12-E, Attachment D), Non-Lobbying Certification (Exhibit 12-E, Attachment F), Disclosure of Lobbying Activities (Exhibit 12-E, Attachment G)
- Local Agency Bid Opening Checklist (Exhibit 15-I)

C. Contract Award

- Contracts are awarded on the basis of the lowest responsive bid from a responsible bidder (15.6 "Contract Award").
- For all NHS projects, a bid analysis will be performed (15.6 "Contract Award").
- No negotiations with contractor occurred prior to award (not allowed).
- Local Agency-Bidder DBE Information Sheet (Exhibit 15-G) to be submitted by successful bidder.

The following documents will be forwarded to the Caltrans District Local Assistance Engineer immediately after award of the contract:

- Contract Award Checklist (Exhibit 15-L)
- Detail Estimate (Exhibit 15-M)
- Finance Letter
- RE's Checklist

D. Subcontracting

- For all NHS projects, at least 30% of the contract work is to be performed by the prime contractor (see Chapter 16, Section 16.6 "Subcontractors")

Local agency's person in "Responsible Charge"

(date)

Distribution: Original Local Agency Project File
One copy - DLAE

RESIDENT ENGINEER'S CONSTRUCTION CONTRACT ADMINISTRATION CHECKLIST

This form is to be completed and signed by the local agency's Resident Engineer, and submitted with Local agency's Award Package

This form was created to help local agency Resident Engineers with the administration of the federal-aid projects. This list does not contain all the Federal-aid requirements for administration of federal-aid projects. Resident Engineers are advised to review the *Local Assistance Procedures Manual* to be familiar with all the federal-aid requirements.

This form shall be used as reference if the local agency's federal-aid project is subject to a Process Review.

Local Agency Name _____

Federal-aid Project No. _____

1. Contract Staffing:

Names and titles of all staff assigned to the contract shall be in the contract files and shall be adequate (see Chapter 16, Section 16.3 "Project Supervision and Inspection").

Date of Preconstruction Conference (Attendees list in contract file) _____

2. Authorization:

Date of the "Authorization to Proceed with Construction" _____
(Shall be prior to date project was advertised)

Date the project was advertised _____

3. Contract Files:

Files shall be in an established order and separate from other contracts (see Chapter 16, Section 16.8 "Project Files").

Check one of the following: Index used on this project is Local agency's standard for all jobs, or
 For federal-aid jobs only.

4. Resident Engineer's/Construction Inspectors Daily Diaries:

Shall be current, thorough and neat with detailed information on all work performed (see Chapter 16, Section 16.7 "Engineer's Daily Reports").

5. Construction Records and Accounting Procedures:

Detail Estimate(s) and Finance Letter(s) are in the project files.

Amount of federal-aid funds encumbered for the project, _____

Program Supplemental Agreement is in the project files.

Distribution: 1. Local Agency Project File 2. DLAE (please put on first page only)

- There shall be source documents supporting progress payments made to contractor.
- There shall be separate item sheets for each contract item paid.
- There shall be a procedure for Administrative or Labor Compliance deductions.
- Invoices to the State shall match progress payments made to the contractor.
- 6. Contract Time:**
 - A method shall be established to determine contract time (see Chapter 16, Section 16.5 "Contract Time").
- 7. Labor Compliance:**
 - Certified payrolls shall be spot-checked against daily diaries and prevailing wages (see Chapter 16, Section 16.11 "Labor Compliance").
Local agency's Labor Compliance Officer, _____
- 8. EEO:**
 - Maintain records to ensure EEO requirements are performed and documented in contract record (see Chapter 16, Section 16.12 "Equal Employment Opportunity").

Local agency's EEO Compliance Officer, _____
- 9. EEO/Wage Rate/False Statements Posters:**
 - Federal posters shall be posted for every worker to see at, or near, the contractor's office at the construction site or at the workers central gathering point.
- 10. Employee Interviews:**
 - There shall be employee interviews conducted (see Chapter 16, Exhibit 16-N).
- 11. OJT:**
 - Are OJT requirements included in the contract, yes no .
 - If yes, documentation will be retained in project files to account for the apprentices on the job.
- 12. DBE:**
 - Local agency's Annual Anticipated DBE Participation Level,
 - Local agency's DBE Liaison Officer, _____
 - *Contractor's completed Local Agency Bidder-DBE-Information Form (Exhibit 15-G) in project files.
 - *Contract DBE availability advisory percentage for this project
 - *Contractor has been provided "Monthly DBE Trucking Verification" Form (see Chapter 16, Exhibit 16-Z)

LOCAL AGENCY PROJECT ADVERTISING CHECKLIST

Project# _____
DIST-----CO-----RTE-----PM-----Agency

Federal Project# _____

Location: _____

Limits: _____

	<u>YES</u>	<u>NO</u>	<u>NOT APPLICABLE</u>
PS&E Review	[]	[]	[]
Are the following complete?			
Environmental measures incorporated?	[]	[]	[]
Right of Way Certification.	[]	[]	[]
Design	[]	[]	[]
Traffic (Electrical/Signing/Striping)	[]	[]	[]
Materials	[]	[]	[]
Landscaping	[]	[]	[]
Hydraulics	[]	[]	[]
Permits	[]	[]	[]
Bridge Plans	[]	[]	[]
Are all encroachments permits obtained?	[]	[]	[]
Are design exceptions approved?	[]	[]	[]
Is material testing and sampling arranged?	[]	[]	[]
DBE Annual Submittal Form approved?	[]	[]	[]
Is there force account work for this project?	[]	[]	[]
Is agency furnished material approved?	[]	[]	[]
Are the federal funds for construction authorized ?	[]	[]	[]
Has a fund allocation been approved by the California Transportation Commission (if required)?	[]	[]	[]
Have a complete set of Plans and Special Provisions been sent to the Caltrans District Local Assistance Engineer (two copies if structures (bridges) are involved)?	[]	[]	[]
How long is the advertisement period? _____			

Reviewed by: _____
(Name of Local Agency Representative)

Title: _____

Date: _____

Distribution: Local Agency Project File

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**INSTRUCTIONS - LOCAL AGENCY BIDDER-DBE (CONSTRUCTION CONTRACTS)
INFORMATION FORM (Revised 08/04)**

The form requires specific information regarding the construction contract: Agency, Location, Project Descriptions, Contract Number (assigned by local agency), Federal Aid Project Number (assigned by Caltrans-Local Assistance), Total Dollar Contract Amount, Bid Date, Bidder's Name and Advertised DBE Contract Availability Advisory.

The form has a column for the Contract Item Number (or Item No's) and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. The DBE should provide a certification number to the Contractor. Notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (must be certified on the date bids are opened and include DBE address and phone number).

There is a column for the total DBE dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.)

Exhibit 15-G must be signed and dated by the person bidding. Also list a phone number in the space provided and print the name of the person to contact.

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LOCAL AGENCY BID OPENING CHECKLIST

Project Information: _____
DIST-----CO-----RTE-----PM-----Agency

Federal Project Number: _____

Location: _____

Limits: _____

Bid opening date and time	_____
Bid opening by	Name: _____
Bids publicly opened and read aloud?	_____ (Yes/No)
Addenda certified by	_____
Advertisement date	_____
Engineers Estimate Compared?	_____ (Yes/No)
Low Bidder Name	_____
Amount	_____
Number of Bidders	_____
Bid irregularities?	_____ (Yes/No)
Noncollusion affidavit included (Exhibit 12-E, Attachment D)?	_____ (Yes/No)
Low Bid signed?	_____ (Yes/No)
All Addenda certified by all bidders?	_____ (Yes/No)

Reviewed by: _____
(Name of Local Agency Representative)

Title: _____

Date: _____

Distribution: Original- Local Agency Project File

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LOCAL AGENCY CONTRACT AWARD CHECKLIST

Project Sponsor: _____

Federal-aid project#: _____

Location: _____
DIST-----CO----- (Road/Street or RTE)-----PM-----Agency

Limits: _____
(Physical limits reference postmiles or intersections)

Has Caltrans issued an "Authorization to Proceed" in writing with federal funds included for construction? and is the amount correct?	_____ (yes/no)
Copy of engineers estimate:	_____ to be attached
Is material testing and sampling arranged?	_____ (yes/no)
Copy of low bidder's proposal:	_____ to be attached
Low Bid signed in ink?	_____ (yes/no)
Local Agency DBE Information Sheet included (Exhibit 15-G).....	_____ to be attached
Is the Noncollusion Affidavit (Chapter 12, "PS&E," Exhibit 12-F) signed and included in the low bidders proposal?	_____ (yes/no)
Is the Bid summary (itemized bids for 3 lowest bidders) complete?	_____ (yes/no)
Addendum procedures adhered to?	_____ (yes/no)
TIP information, Authorized amount.....	_____ \$ amount
Include TIP page number or amendment number here:	_____
Bid opening procedures were adhered to?:	_____ (yes/no)
Date DLA's Federal Wage Rate website was checked for updates	_____ date
Date of bid opening	_____ date
Date of award:	_____ date
Amount of award:	_____ \$ amount
Detail Estimate (Exhibit 15-M):	_____ to be attached
Finance Letter (Exhibit 15-N):	_____ to be attached
Resident Engineer's Construction Contract Administration Checklist.....	_____ to be attached
Is successful bidder licensed?	_____ (yes/no)

Reviewed by: _____
(Signature of local agency Representative)

(Name printed or typed)

Title: _____

Date: _____

Phone Number: _____

NOTE: If the answer is no to any of the above questions, a letter of explanation is required. The DLAE shall review the explanation and determine if the local agency is eligible for federal funds.

Distribution: All NHS Projects: (1) Original + 1 copy-Caltrans District Local Assistance Engineer . (2) Copy-Local Agency Project File

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directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses and also includes costs incurred by the state in performing federal-aid project related audits which directly benefit the federal-aid highway program.

- Contract Claim - A demand for additional compensation, which cannot be resolved between the contractor and the local agency representative in responsible charge of the project.
- Contract Claim Award - A payment made by a local agency to a federal-aid contractor on the basis of an arbitration or mediation proceeding, administrative board determination, court judgment, negotiated settlement, or other contract claim settlement.
- Contract Claim Defense Costs - Local agency costs related to the defense and settlement of contract claims including, but not limited to salaries of employees, consultants, attorney fees, boards of arbitration, appeals boards, courts or similar tribunals.
- CFR - Code of Federal Regulations. Document produced by the federal government implementing the requirements of federal statutes.
- DVBE - Disabled Veteran Business Enterprise (for state only programs)
- DBE - Disadvantaged Business Enterprise See Chapter 9, Section 9.5.
- Final Invoice - For an example see Chapter 17, *Project Completion*, Exhibit 17-C, and refer to Chapter 5, *Accounting/Invoices*, for instructions.
- Force Account - A basis of payment for the direct performance of highway construction work with payment based on actual cost of labor, equipment, and materials furnished with consideration for overhead and profit.
- Foremen - Men and women in direct charge of crafts workers or laborers performing work on the project.
- “Frequency Tables (Tables)” - See Exhibit 16-R, *Size, Frequency, and Location of Sampling and Testing*.
- Full Oversight – Projects on Interstate that are new or reconstruction (not 3R) greater than \$1 million for which FHWA has Full Oversight.
- Independent Assurance Sampling and Testing (IAST) - Periodic testing by a specially trained tester, to verify that acceptance testing is being performed correctly with accurate test equipment.
- Laborer, Semi-Skilled - All laborers classified by specialized type of work.
- Laborer, Unskilled - Non-classified laborers.
- Local Agency - A California City, County, or other local public agency. In many instances this term is used loosely to include nonprofit organizations.

- Maintenance - As defined in the USC: the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization.
- “Materials Certificate” - See Chapter 17, *Project Completion*, Exhibit 17-F.
- Mechanics - Equipment service and maintenance personnel
- NHS - National Highway System
- Officials (Managers) - Officers, project engineers, superintendents, etc., having management level responsibilities and authority
- Others - Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees on the project should thus be accounted for.
- Progress Invoice - Periodic billing invoice by local/regional agencies for reimbursement of costs on ongoing contracts.
- QAP - Quality Assurance Program
- QC/QA - Quality Control/Quality Assurance - see “Statistical Quality Assurance” in this chapter
- Quality Assurance Program - A sampling and testing program that will provide assurance that the materials and workmanship incorporated in each highway construction project are in conformance with the contract specifications. The main elements of a Quality Assurance Program are acceptance testing and independent assurance sampling and testing.
- RE - Resident Engineer. A registered engineer who is empowered to administer the construction contract.
- SHA - State Highway Agency (Caltrans)
- Source Inspection - Acceptance testing of manufactured and prefabricated materials at locations other than the job site.
- State-Authorized Project - A classification for federal-aid projects, which are not subject to FHWA review and oversight required by *Title 23 Code of Federal Regulations*. For State-Authorized federal-aid projects the FHWA and Caltrans exercises the maximum degree of delegation of authority to local agencies (see Chapter 2, Section 2.4, *Stewardship Letters of Agreement*, and Figure 2-1, *FHWA Oversight*).
- Supervisors - All levels of project supervision, if any, between management and foreman levels
- TCP - Traffic Control Plan

16.3 PROJECT SUPERVISION AND INSPECTION

INTRODUCTION

Construction engineering is eligible for federal-aid reimbursement if it is identified and programmed in the “Authorization to Proceed.” A fifteen percent (15%) limitation on construction engineering is required for the federal-aid program on a statewide basis. For more information on programming construction engineering see Chapter 3, *Project Authorization*.

For State-Authorized projects, FHWA has assigned the responsibility of contract administration and construction inspection to Caltrans. This responsibility is conveyed to Caltrans by way of an E-76, which is executed for each federal-aid project. For all local federal-aid projects, further delegation of responsibility is made by Caltrans to the agency administering the project by way of the state/local agreements called master agreements and program supplements. This delegation is based on the following conditions:

- All federal requirements shall be met on work performed under a contract awarded by a local public agency.
- Force account work shall be in full compliance with Chapter 12, *Plans, Specifications & Estimate*, Section 12.2, *Method of Construction*.
- Local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work.
- Local public agency shall provide a full-time employee of the agency to be in responsible charge of the project that employs consultants for construction engineering services.

Such an arrangement does not relieve the Caltrans of overall project responsibility. Caltrans shall review local agency project staffing by periodic process reviews to assure compliance.

PROJECT STAFFING

Adequate construction personnel shall be provided to ensure adequate field control, conformance with the contract specifications, accurate contract payments to the contractor, and that quality transportation facilities are constructed. Local agencies shall include in the project records the names and titles of all staff assigned to each federal-aid project.

The documentation of project staffing is essential in making a determination of the adequacy of the local agency’s construction staffing.

PROCEDURES

The administering agency must designate a qualified engineer who is empowered to administer the contract. The agency may employ a consultant to provide construction engineering services such as inspection or survey work, however, the agency must provide a full-time employee to be in charge of and have administrative

control of the project. A consulting firm that is on retainer as City Engineer is considered as a full-time publicly employed engineer.

Contractors, including those operating in joint venture, are required under the contract to designate in writing a person or persons authorized to supervise the work and to act for the contractor on the project. The administering agency's engineer is to assure that this information is on file. The addresses and local telephone numbers of such persons should be included.

The work must be inspected to assure compliance with the contract. Deviations must promptly be brought to the contractor's attention. Material samples must be taken and tests performed as noted in Section 16.14 of this chapter or in accordance with the local agencies own Quality Assurance Program. A record must be made of the engineer's and inspector's activities, as noted in Section 16.7 of this chapter.

The activities of the engineer and inspector may vary considerably depending on the terms of the contract; such as, end result specifications; method specification; types of measurement and payment clauses; experience of the contractor; complexity of the work; adequacy of the plans and specifications; protection of the public; and other factors. The local agency shall assign the necessary personnel to the project to assure that all the requirements of the contract are being fulfilled.

When a problem arises, the Resident Engineer may request assistance or clarification from the DLAE. The DLAE shall evaluate staff availability and determine if assistance can be provided. It is recommended that Chapter VI of the Caltrans *Construction Manual* be reviewed for more specific activities relating to roadwork. For structure work the State's *Bridge Construction Records and Procedures Manual* contains much technical reference material.

16.4 PRE-CONSTRUCTION CONFERENCE AND PARTNERING

PARTNERING

Partnering is a relationship between the local agency and the contractor, formed in order to effectively complete the contract to the benefit of both parties. The purpose of this relationship is to maintain cooperative communication and to mutually resolve

2. SUBCONTRACTING

a. The contractor must request permission in writing and receive written consent from the local agency **before** subletting any portion of a contract to a first tier subcontractor. This is accomplished by using the "Subcontracting Request" (FORM DC-CEM-1201). This form is included as Exhibit 16-B, of this chapter and states what portion of an item is to be subcontracted along with the dollar value of that item. The requirement for written consent does not apply to second and lower tier subcontracts. However, all weekly payroll, labor compliance, EEO, insurance and other contractual obligations remain in effect regardless of tier. All subcontracts shall be in the form of a written agreement and contain all pertinent provisions and requirements of the prime contract including all or a portion of the federal boiler plate specifications. Certain provisions of the boiler plate are required based on the dollar amount of the contract, or type of facility being constructed. Refer to Chapter 12, "Plans Specifications & Estimate," for specific details of these requirements.

b. There are special requirements for DBE trucking as reporting must be done monthly on all trucking done by DBE subcontractors in order to document DBE participation. Monthly reporting will be accomplished using Exhibit 16-Z, "Monthly DBE Trucking Verification".

3. TERMS: Terms used above are defined as follows:

"its own organization" - includes only workers employed and paid directly by the prime contractor, and equipment owned or rented, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

"Specialty Items" - are limited to items of work that require highly specialized knowledge, craftsmanship or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole. The items are generally limited to minor components of the overall contract. However, the fabrication and erection of certain types of steel structures are of such a nature and intricacy that they should be considered "specialty items" even though the cost of this work may constitute the major portion of the contract amount. For each individual construction contract, the administering agency must select any items that are to be treated as "specialty items" and list such selected items in the Special Provisions, or bid schedule.

16.7 ENGINEER'S DAILY REPORTS

PROCEDURES

The administering agency's Resident Engineer, Assistant Resident Engineers, and construction inspectors shall keep daily reports to record work in progress.

The Daily Reports shall record the hours worked by men and equipment:

- Where work is being paid for based on the cost of labor, equipment, and material
- When there is an anticipated change in character of work
- When there is a potentially significant overrun or underrun, or
- When there is disputed work or a potential claim

The detail should be sufficient to permit review of the contractor's costs of the work in a manner similar to force account. Equipment should be identified sufficiently to enable determination of the applicable rental rates and operator's minimum wage. In some cases it may be desirable to record dates of arrival or departure of equipment, as well as idle time for breakdown or other reasons.

The narrative portion of the report should include a description of the contractor's operation and the location where the work was performed. It should also include statements made by the contractor or agency personnel, which are pertinent to the work. The report must also contain the name of the contractor or subcontractor performing the work.

When the report is used to determine compliance with the labor provisions (see (Section 16.11, "Labor Compliance") of the contract, include the following additional information:

- The names or identification numbers of the contractor's personnel
- The respective classifications of the work being performed
- The number of hours worked on the date covered by the report

Reporting for labor compliance shall be done on a random spot-check basis only. The number of reports for labor compliance purposes should vary with the size and duration of the contract and the degree of compliance revealed by checking previous reports. One report per week for each operation being performed on the project should be used as an initial guide. The frequency may be reduced after a high degree of compliance has been verified.

An example of both the Resident Engineer and Assistant Resident Engineers daily report forms used by Caltrans are shown as Exhibit 16-C.

The engineers' daily reports discussed herein are required in addition to the extra work reports submitted by the contractor. For more information on the organization and use of the daily reports see the *Caltrans Construction Manual*, Chapter I, Section 1-10, and Chapter III, Section 3-00 and Section 3-01.

16.8 PROJECT FILES

An administering local agency must establish a separate record file for each federal-aid highway project. The project file shall contain all data pertinent to the work and to the

- Applying necessary sanctions against the prime contractor for failure to submit payrolls or noncompliance with the labor standard requirements. Sanctions must be in conformance with current Caltrans policy as described in the *Construction Manual, Chapter IX, Section 9-01, "Labor Compliance."*
- Reporting any apparent violation of state or federal labor requirements to the DLAE immediately upon discovery. In the case of local agency contracts that are 100 percent federally funded, violations should also be reported to the US Department of Labor (a listing of their office addresses is shown in Exhibit 16-Q). This information shall be forwarded to and maintained by the HQ Local Assistance Civil Rights Coordinator and is to be forwarded on form FHWA-1494 semi-annually, to the Caltrans Headquarters Construction Office. Caltrans Headquarters Construction is responsible for summarizing the information statewide and submitting it to FHWA. The local agencies may contact the District Labor Compliance Officer for advice, training, and assistance as needed, or the following for labor compliance cases at the California Department of Industrial Relations, Division of Labor Standards Enforcement

Southern California

Public Works Contracts
 Division Of Labor Standards Enforcement
 6150 Van Nuys Blvd., Rm. 100
 Van Nuys, Ca 91401
 (818) 901-5538

Northern California

Public Works Contracts
 Division of Labor Standards Enforcement
 2424 Arden Way, Rm. 340
 Sacramento, Ca 95825
 (916) 263-2842

16.12 EQUAL EMPLOYMENT OPPORTUNITY

INTRODUCTION

Equal Employment Opportunity (EEO) requirements apply to all federal-aid construction contracts and all related subcontracts of \$10,000 or more. The Contractor is subject to the U.S. Department of Transportation EEO and nondiscrimination requirements pursuant to 23 USC 140 and its implementing regulations. In addition, the contractor is subject to the U.S. Department of Labor's federal-aid contract requirements that include women and minority recruitment goals and the adherence to specific EEO and affirmative action standards pursuant to 41 CFR, Chapter 60 (see FHWA Form 1273, Exhibit 12-E, Chapter 12).

PROCEDURES

A proactive approach to ensure compliance is to discuss the requirements of the contract at the pre-construction conference. The EEO responsibilities specifically listed in the "Required Contract Provisions, Federal-aid Construction Contracts (Form 1273)" are broad and inclusive, requiring specific actions regarding all aspects of employment including but not limited to recruitment, hiring, upgrading, promotion, transfer, overtime, demotion, layoff, termination, training, working with the union, addressing discrimination complaints, and dissemination of EEO policy.

RECORDKEEPING

The administering agency must document contractor's compliance with the EEO requirements according to the FHWA Form 1273, Exhibit 12-E, Chapter 12 and maintain the record for three years.

COMPLIANCE REVIEWS

Caltrans Civil Rights Office selects a federal-aid prime contractor to be reviewed. Caltrans Civil Rights Office conducts formal compliance reviews of federal-aid prime and subcontractors during the peak employment period of both Caltrans and local agency federal-aid contracts. The formal compliance review consists of a desk audit and an on-site review that examines the contractor's personnel policies, EEO practices, workforce composition (i.e., job classification, race, gender) and documentation of the contractor's efforts to recruit women and minorities in all aspects of employment. An EEO Contractor Compliance Review model based on 23 CFR Part 230, Subparts A and D is used by the Caltrans Civil Rights Office.

REPORTING

The FHWA Form PR-1391, (see sample: Exhibit 16-O, "Federal-aid Highway Construction Contractors Annual EEO Report", Chapter 16) is prepared by the prime contractor and by each subcontractor if the federal-aid construction contract work exceeds \$10,000. The reporting period is only for federal-aid construction contracts that are active during the last pay period in July. If the contract is completed prior to the last pay period in July, or the construction contract does not begin until August, then no PR-1391 report needs to be filed.

It is the responsibility of the administering agency to ensure that the prime and subcontractors complete the form accurately and timely. The administering agency must review, countersign and submit the PR-1391 to the DLAE by August 25 of each year. Failure to submit the report form timely may result in sanction and/or a process review. The DLAE compiles and forwards the reports to the Division of Local Assistance Civil Rights Coordinator no later than August 30.

U.S. Department of Labor (DOL), Executive Order 11246 - Only the DOL has the authority to determine compliance with EO 11246 and its implementing regulations. Local agencies do not have independent authority to determine compliance with EO 11246, and 41 CFR, Chapter 60, or the minority and female goals established by the Office of Federal Contract Compliance Programs, (OFCCP). If the administering agency becomes aware of any possible violations of EO 11246 or 41 CFR, Chapter 60, the administering agency has the authority and responsibility to notify the OFCCP. For contact information, see Exhibit 16-Q, "U.S. Department of Labor, Office of Federal Contract Compliance Programs (Offices Within California)"Chapter 16.

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