



## *Local Programs Procedures*

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**LPP 09-02      Manual Update**  
**Subject:      New Race Conscious Disadvantaged Business Enterprise (DBE) Program**  
**Implementing Guidelines and Other Technical Changes**

Reference:      *Local Assistance Procedures Manual (LAPM)*, Chapter 3-Project Authorization, Chapter 5-Accounting/Invoicing, Chapter 9-Civil Rights and Disadvantaged Business Enterprises, Chapter 10-Consultant Selection, Chapter 12-Plans, Specifications & Estimate, Chapter 13-Right of Way, Chapter 15-Advertise and Award Project, Chapter 16-Administer Construction Contracts, and Chapter 17-Project Completion.

Effective Date: July 31, 2009

Approved: \_\_\_\_\_  
Denix Anbiah, Chief  
Division of Local Assistance

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### WHAT IS AN LPP

LPPs are Local Programs Procedures. These documents are used for the deployment of new procedures and policies between updates of the Local Assistance manuals, guidelines and programs. They are numbered according to calendar year and order in which released. This is the second LPP issued in 2009; hence, it is LPP 09-02.

### PURPOSE

This LPP reissued in its entirety Chapter 9 “Civil Rights and Disadvantaged Business Enterprises,” with the purpose of: 1) providing guidance on accessibility requirements pursuant to Section 504 of the Rehabilitation Act of 1973 and codified in 49 CFR, Part 27, and 2) providing technical guidance in implementing the new Race Conscious Disadvantaged Business Enterprise (DBE) Program. Other chapters affected by the implementation of the new Race Conscious DBE Program were included with their changes. Other technical and minor administrative changes have been made as well.

## BACKGROUND

**Section 504 of the Rehabilitation Act of 1973 (49 CFR, Part 27)** - In order to ensure nondiscrimination on the basis of disability, 49 CFR, Part 27 requires federal-aid recipients to perform a self evaluation, develop a transition plan/schedule and update as needed, designate a responsible employee, and adopt grievance procedures.

**New Race Conscious DBE Program** - The Ninth Circuit Court of Appeals ruling on May 9, 2005, in the State of Washington (*Western States Paving Co. vs. Washington State Department of Transportation*) established that before putting goals on contracts, the State of Washington must first determine if evidence of discrimination exists in their particular transportation engineering and construction market. The United States Department of Transportation (US DOT) recommends the use of disparity studies to determine if there is an evidence of discrimination.

The ruling obligated the California Department of Transportation (Caltrans) to conduct an “Availability and Disparity Study.” Upon completion, the Study found that DBEs owned and controlled by Hispanic American males and Sub-continent Asian American males were at or near parity for availability and utilization, while DBEs owned and controlled by Asian-Pacific Americans, African Americans, Native Americans, and Women were not. To remedy the disparity, Caltrans and local agencies shall resume placing goals on their federal-aid contracts. The contract goals shall target DBEs owned and controlled by Asian-Pacific Americans, African Americans, Native Americans, and Women only. Utilization of DBEs owned and controlled by Hispanic American males, and Subcontinent Asian American males shall be captured and counted towards the Race Neutral portion of the overall DBE goal.

## PREVIOUS PROCEDURE

**Section 504 Accessibility Requirements** - The previous procedure did not include local agency certification of compliance with 49 CFR, Part 27.

**DBE Program** - The previous procedure provided guidance on implementing the Race Neutral DBE program. A Race Neutral program disallows contract goals and good faith efforts and the Annual Anticipated DBE Participation Level can only be met by utilizing race neutral measures. Meeting the contract goal or making a good faith effort to meet the goal is not a condition of award. Substitution of a DBE with a DBE goal, or a good faith effort to do so, is not required.

## NEW PROCEDURE

**Section 504 Accessibility Requirements** - Local agencies will now submit, **together with the DBE Annual Submittal, an American Disability Act Annual Submittal** in which local agencies certify that the accessibility requirements of 49 CFR, Part 27 are met.

**Race Conscious DBE Program Requirements** - The new procedure reinstates the use of contract goals and good faith efforts. Meeting the contract goal by committing to utilize UDBEs or documenting a bona fide good faith effort to do so, is now a condition of award. Additionally, contract goals are now specifically targeted at Underutilized DBEs (UDBEs) (*DBEs owned and controlled by Asian-Pacific Americans, African Americans, Native Americans and Women*). Contract goals do not target DBEs owned and controlled by Hispanic American males and Subcontinent Asian American males; however, utilization of DBEs owned and controlled by Hispanic American males and Subcontinent Asian American males shall be captured and reported as race neutral DBE participation. Substitutions of UDBEs must be substituted with UDBEs or document good faith effort to do so, in order to meet the contract goal.

A new agreement “California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies,” (Exhibit 9-A of the LAPM) shall be executed by the local agency and submitted to the District Local Assistance Engineer before a local agency may award contracts with race conscious provisions.

The new federal-aid boilerplate specifications, which include the Race Conscious Provisions, are found at the Caltrans Division of Local Assistance web site under “Publications” at:

[http://www.dot.ca.gov/hq/LocalPrograms/sam\\_boil/sam\\_boil.htm](http://www.dot.ca.gov/hq/LocalPrograms/sam_boil/sam_boil.htm)

## USER FRIENDLY FEATURES

- These new procedures are incorporated in the electronic version of the LAPM and LAPG that are available at the Division of Local Assistance (DLA) Home Page on the Internet at: <http://www.dot.ca.gov/hq/LocalPrograms/>. Under “Publications” select *Local Assistance Procedures Manual* or *Local Assistance Program Guidelines*.
- You may also purchase the Publications for Local Assistance DVD, which acts as a one-stop shop for information and promotes flexible access to helpful information for local project delivery at: <http://www.dot.ca.gov/hq/LocalPrograms/lam/PubsDVD.htm>

- Additional user-friendly features were developed to make the manual easier to edit and to access the DLA web site. **Note: Sidebars are used to indicate where revisions were made to affected pages. However, when a chapter is released in its entirety, sidebars are not indicated. The revised pages in this LPP are to replace the pages affected in the hard copy of the LAPM.**
- To receive an electronic notification when new information is posted on the DLA web site, please subscribe to the DLA listserver at:  
<http://www.dot.ca.gov/hq/LocalPrograms/sub.htm>
- Comments and suggestions for improvement to the manual or the processes and procedures are welcome. They may be submitted to:

Department of Transportation  
Division of Local Assistance, MS 1  
Attention: David Saia  
P.O. Box 942874  
Sacramento, CA 94274-0001  
FAX (916) 654-2409  
[David\\_Saia@dot.ca.gov](mailto:David_Saia@dot.ca.gov)

### **NOTIFICATION TO ALL LPP MAIL RECIPIENTS:**

#### ***“Local Assistance Procedures Manual and Local Assistance Program Guidelines Going Paperless”***

***This LPP 09-02 will be the last LPP in hard copy that will be sent out to the LPP mail recipients. The Division of Local Assistance will no longer be distributing hard copies of the Local Assistance Procedures Manual (LAPM), Local Assistance Program Guidelines (LAPG), and Local Programs Procedures (LPPs)—which are used to disseminate policy and procedural changes to the LAPM and LAPG. This cost saving measure will take effect on September 1, 2009.***

*The LAPM, LAPG and LPPs will continue to be posted on the Local Assistance web site under “Publications” at: <http://www.dot.ca.gov/hq/LocalPrograms/public.htm>. In order to be notified of updates, stakeholders must be subscribed to our listserver by providing an e-mail address and the required information at: <http://lists.dot.ca.gov/mailman/listinfo/dla-website-updates-announce>.*

*A limited number of LAPM and LAPG hardcopies are still available from Caltrans Publications Unit at: <http://caltrans-opac.ca.gov/publicat.htm> for \$45 each while supplies last. These hard copies are current as of July 31, 2009, and will not be updated when future LPPs become available.*

***DLA Office Bulletin 09-03- Using the Internet for Federal Wage Rates***

*This LPP 09-02 does not include the new information covered by the OB 09-03 in regards to the Federal Wage Rate available on the DLA web site under "Publications"*

*[http://www.dot.ca.gov/hq/LocalPrograms/DLA%20OB/DLA\\_OB.htm](http://www.dot.ca.gov/hq/LocalPrograms/DLA%20OB/DLA_OB.htm) -*

*A new LPP will be released in the future that will include this new information on Federal Wage Rates.*

**SUMMARY OF CHANGES**

***Chapter 9 "Civil Rights and Disadvantaged Business Enterprises" is reissued in its entirety.***

<b>LAPM Item</b>	<b>Change</b>
<b>Chapter 3 Section 3.1 (Introduction) pages 3-3 thru 7</b>	Arranged the alphabetical order of the list of acronyms; included the acronym for "UDBE."  Under "Terms and Definitions" updated the list of terms defined.
<b>Section 3.2 (Prior to Federal Authorization) page 3-8</b>	Corrected the exhibit title.
<b>Exhibits 3- A thru 3-D, pages 3-21 thru 31</b>	Updated Exhibits 3-A through 3-D under " <i>Disadvantaged Business Enterprise (DBE)</i> " to include the new required documents. Minor administrative changes were made in the first paragraph for Exhibits 3-A through 3-D.
<b>Exhibit 3-E, page 3-34</b>	Under the " <i>Disadvantaged Business Enterprise (DBE) Submittals</i> ," replaced " <i>Race Neutral</i> " with " <i>Race Conscious</i> ."  Under "Agency Contact for Program Supplement Agreement" rearranged the order of the phone number and e-mail.

<b>Exhibit 3- F, page 3-38</b>	Under “ <i>Disadvantaged Business Enterprise (DBE) Submittals</i> ,” corrected the name of the form cited.
<b>Chapter 5 Section 5.2 (Requirements for Reimbursement), page 5-5</b>	Under “Award Package,” corrected list item no. 5 to “ <i>Local Agency Bidder DBE Information (Construction Contracts) (LAPM, Exhibit 15-G2)</i> .”
<b>Chapter 9 Table of Contents</b>	Updated the TOC to reflect the changes.
<b>Section 9.1 (Introduction), page 9-1</b>	Revised the second paragraph referencing to the DLA web site.
<b>Section 9.3 (Accessibility), pages 9-4 thru 6</b>	<p>Under “Implementation,” added the following:</p> <ul style="list-style-type: none"> <li>• “<i>Self Evaluation and Transition Plan</i>” detailing the requirements for federal-aid recipients per 49 CFR, Part 27.</li> <li>• “<i>Designation of an ADA Coordinator</i>” to be designated by the Local Agency to coordinate compliance with 49 CFR, Part 27.</li> <li>• “<i>Adoption of the Grievance Procedures</i>” by the local agency for appropriate due process standards.</li> <li>• “<i>Certification</i>” local agencies certify compliance with federal and state laws.</li> <li>• Added language describing pedestrian facilities covered by federal and state law.</li> </ul> <p>Under “Monitoring,” added language in regards to the Local Agency Annual ADA Submittal Form that must be provided by the local agency to the DLAE.</p> <p>Under “Complaints,” corrected the reference previously cited.</p>
<b>Section 9.4 (Equal Employment Opportunity Contractor Compliance) page 9-6</b>	<p>Added the acronym (EEO) in the section title.</p> <p>Third paragraph corrected Indian preference to... “<i>Native American Indian preference</i>”....</p>

<b>Section 9.5 (Disadvantaged Business Enterprise) pages 9-8 thru 11</b>	<p>The following changes were made to this section:</p> <ul style="list-style-type: none"> <li>• Under subheading “Background,” added a second paragraph describing events leading to the transition to the Race Conscious DBE Program.</li> <li>• Under subheading “DBE Definitions,” added “<i>Underutilized DBE (UDBE)</i>” in the list of terms defined.</li> <li>• Under “DBE Program Responsibilities,” made revisions to: <ul style="list-style-type: none"> <li>- Bulleted items on the responsibilities of Local Assistance under “Division of Local Assistance (DLA) and District Local Assistance Engineer (DLAE).”</li> <li>- Items under “Local Agency Responsibilities.”</li> <li>- Other minor administrative changes were made.</li> </ul> </li> </ul>
<b>Section 9.6 (Local Agency Responsibilities Under Caltrans DBE Program Plan) pages 9-12, 13</b>	<p>The following changes were made to this section:</p> <ul style="list-style-type: none"> <li>• Second paragraph, corrected the exhibit cited to “<i>California Department of Transportation DBE Program Implementation Agreement for Local Agencies.</i>”</li> <li>• Additional new information to be included in the “Local Agency DBE Annual Submittal Form,” Exhibit 9-B.</li> <li>• Revised the heading “<i>DBE Race-Neutral Implementation Agreement for Local Agencies</i>” to “<i>DBE Implementation Agreement for Local Agencies.</i>”</li> <li>• Revised language of “DBE Annual Submittal Form.”</li> <li>• Added a new heading “<i>Race Neutral and Race Conscious Means of Meeting the Overall Statewide Annual DBE Goal.</i>”</li> <li>• Corrected the exhibit title under “DBE Liaison Officer.”</li> </ul>
<b>Section 9.7 (Process for Establishing Annual Anticipated DBE Participation Level (AADPL)) pages 9-15, 16, 18</b>	<p>The following changes were made to this section:</p> <ul style="list-style-type: none"> <li>• Third sentence first paragraph, replaced “<i>jurisdiction</i>” with “<i>market area</i>”; bolded the last paragraph referencing to Exhibit 9-D for guidance in calculating the AADPL.</li> <li>• Under “Methodology –Step 1,” the following changes were made: <ul style="list-style-type: none"> <li>- Added the instruction to choose another method for calculating the AADPL under “Use of a Bidders List.”</li> <li>- Reference to Exhibit 9-D was added under “Use of DBE Directories and Census Bureau Data.”</li> </ul> </li> <li>• Under “Methodology-Step 2,” the following changes were made: <ul style="list-style-type: none"> <li>- Revised the title of the section heading from “<i>Race-Neutral Components</i>”...to... “<i>Race Neutral and Race Conscious Components,</i>” also added the UDBE contract goals.</li> <li>- Added a new subheading “<i>Expected Participation.</i>”</li> </ul> </li> </ul>

<b>Section 9.8 (DBE Participation on the Contract) pages 9-19 thru 23</b>	<p>The following changes were made to this section:</p> <ul style="list-style-type: none"> <li>• Minor correction to the section title to say “<i>DBE Participation On The Contract.</i>”</li> <li>• Added new subheadings: “<i>UDBE Contract Goals</i>”; “<i>Adjusting UDBE Contract Goals.</i>”</li> <li>• Under subheading “DBE Contract Requirements” added paragraph to explain UDBE contract goals and made the following changes: <ul style="list-style-type: none"> <li>- Revised heading titles from “<i>Local Agency Bidder DBE Information</i>” to “<i>Local Agency Bidder UDBE Commitment and DBE Information Forms,</i>” and “<i>Counting DBE Participation</i>” to “<i>Counting DBE (Including UDBE) Participation.</i>”</li> <li>- Added language to include UDBE commitment in the final report and counting.</li> </ul> </li> </ul>
<b>Section 9.9 (Good Faith Efforts) pages 9-29, 30</b>	Added a new section “9.9. <i>Good Faith Efforts.</i> ”
<b>Section 9.10 (References) page 9-31</b>	Renumbered this section heading to “9.10 <i>References.</i> ”
<b>Exhibit 9-A pages 9-33 thru 40</b>	Updated and revised the title of this exhibit to “ <i>California Department of Transportation Race Conscious Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies</i> ” to reflect current statewide DBE Race Conscious Program.
<b>Exhibit 9-B pages 9-41 thru 42</b>	Updated exhibit to include blank lines for <i>Race Neutral %</i> ; <i>Race Conscious %</i> ; and for local agencies to list estimated contract award dates and monitoring and enforcement mechanisms.
<b>Exhibit 9-C pages 9-45, 46</b>	Added a new exhibit “ <i>Local Agency ADA Annual Submittal Form.</i> ”
<b>Exhibit 9-D pages 9-47-thru 50</b>	Added a new exhibit “ <i>AADPL Calculations Including UDBEs.</i> ”
<b>Chapter 10 Table of Contents)</b>	Updated TOC to reflect the changes made.
<b>Section 10.1 (General) pages 10-1 thru 4</b>	<p>Under “Federal Legislation,” the following changes were made:</p> <ul style="list-style-type: none"> <li>• Deleted the words “<i>bidder(s)</i>” in this section.</li> <li>• Added a bullet item to include Exhibit 10-O1 and Exhibit 10-O2.</li> <li>• Corrected the title of the exhibits in the fourth, fifth, sixth and seventh bullets.</li> </ul> <p>Pages were shifted due to changes made to this section.</p>



<b>Section 10.2 (Identifying &amp; Defining a Need for Consultants)</b> <b>pages 10-5, 6, 6a, 6b, 7, 8</b>	<p>Moved “<i>Figure 10-1 Segmenting Consultant Work</i>” to page 10-6a.</p> <p>Under “DBE Participation,” added a paragraph to explain UDBE contract goal requirements for good faith efforts and substitution of UDBE requirements. Exhibit titles referenced in this section were corrected.</p> <p>Under “Reporting DBE Participation,” the following changes were made:</p> <ul style="list-style-type: none"> <li>Deleted the word(s) “<i>bidder(s)</i>” in this section..</li> <li>Added the subheading “<i>Reporting UDBE Commitments and DBE Information.</i>”</li> </ul> <p>Pages were shifted due to the changes made to this section.</p>
<b>Section 10.3 (Consultant Selection Methods), page 10-11</b>	<p>Under “Initiate Project” of the Flowchart 10-1 corrected the box from “<i>Establish DBE Goals</i>” to “<i>Establish UDBE Goals.</i>”</p>
<b>Section 10.4 (Consultant Selection Using the One-Step RFP Method), page 10-15</b>	<p>Under “Prepare Request for Proposal (RFP),” corrected ...”<i>DBE availability advisory percentage</i>”.... to ....”<i>UDBE contract goal</i>”.....</p>
<b>Section 10.7 (Completing the Project), page 10-25</b>	<p>Under “Project Records,” deleted “<i>when applicable</i>” in the second bulleted item.</p>
<b>Exhibit 10-A page 10-27</b>	<p>Added the required documents in the checklist: “<i>Exhibit 10-O1 and Exhibit 10-O2 (Local Assistance Procedures Manual).</i>”</p>
<b>Exhibit 10-C page 10-31, 33</b>	<p>Updated the checklist:</p> <ul style="list-style-type: none"> <li>List item no. II.A.1. deleted the “<i>Date</i>” tab.</li> <li>List item no. II.B.5. (q) added three bulleted items.</li> <li>List item no. II.B.5. (r) removed the asterisk.</li> <li>List item no. II.B.5. (t) corrected the exhibit title.</li> <li>Moved the explanation for the asterisk at the end of the exhibit page.</li> </ul>
<b>Exhibit 10-D pages 10-35, 39</b>	<p>Updated the Consultant Agreement Outline:</p> <ul style="list-style-type: none"> <li>List item no. A.4. deleted the information for “<i>Name of Contract Administrator.</i>”</li> <li>List item no 6.p) corrected the information and added UDBE goal and good faith effort requirements.</li> </ul>

<b>Exhibit 10-I</b> <b>pages 10-49 thru 52</b>	<p>Updated the exhibit to include the following: definition of UDBE; goal and good faith effort requirements and commitments; the required documentations for UDBE proposer; and other minor changes.</p> <p>Replaced references to “<i>bidder; bidding</i>” with “<i>proposer; proposing.</i>”</p> <p>Updated the instructions to access to the CUCP database to search for certified DBE firm.</p> <p>Deleted Caltrans Publication Distribution Unit and added the web site for ordering directory of certified DBE at:  <a href="http://caltrans-opac.ca.gov/publicat.htm">http://caltrans-opac.ca.gov/publicat.htm</a></p>
<b>Exhibit 10-J</b> <b>pages 10-53 thru 58</b>	<p>Updated the exhibit to include new language on DBE participation and UDBE goal and good faith efforts requirements.</p> <p>Replaced references to “<i>bidders</i>” with “<i>proposers.</i>”</p> <p>Renumbered listed items starting from Item no. 4 thru 6.</p>
<b>Exhibit 10-M</b> <b>page 10-64</b>	Under list item no. VI.6. added the list item “d. <i>Any additional anticipated contract costs.</i> ”
<b>Exhibits 10-O1 and 10-O2</b> <b>pages 10-73 thru 74b</b>	Added new exhibits: Exhibit 10-O1 to collect UDBE commitment towards the UDBE goal, and Exhibit 10-O2 to collect all DBE participation and new “ <i>Instructions.</i> ”
<b>Exhibit 10-P</b> <b>page 10-75</b>	Corrected “ <i>bid or proposal</i> ” to “ <i>proposal/bid.</i> ”
<b>Chapter 12</b> <b>Table of Contents</b>	Update the TOC to reflect the changes made.
<b>Section 12.9</b> <b>(Required Federal Contract Provisions),</b> <b>page 12-22</b>	Under “Disadvantaged Business Enterprise,” added the language on UDBE goal and good faith efforts requirements.
<b>Section 12-10</b> <b>(Restricted Contract Provisions)</b> <b>page 12-29</b>	Under “Project Labor Agreements” deleted the third paragraph, which is a duplicate of the second paragraph.
<b>Exhibit 12-D</b> <b>pages 12-47 thru 56b</b>	<p>The following changes were made to this exhibit:</p> <ul style="list-style-type: none"> <li>List items no. IV. A and B replaced “<i>State-Authorized</i>” and “<i>Full Oversight</i>” with “<i>Delegated</i>” and “<i>High Profile,</i>” respectively, to define to what degree the FHWA oversight is required.</li> <li>List item no. XII. C. deleted checkbox for “<i>2-1.015 Federal Lobbying Activities (Exhibit 12-E, Attachment H).</i>”</li> </ul>

<b>Cont Exhibit 12-D</b> <b>pages 12-47 thru 56</b>	<ul style="list-style-type: none"> <li>List item XII. E. added new check boxes for UDBE goal and non-UDBE goal; added list item no. 2 “<i>Contracts Provisions</i>” and updated listed check boxes .</li> <li>Added in the checklist list item “XII. J. <i>American Recovery and Reinvestment Act (ARRA) Funds.</i>”</li> </ul> <p>Pages were shifted as a result of the changes made to this exhibit.</p>
<b>Exhibit 12-E</b> <b>pages 12-57, 60, thru 62</b>	<p>The following changes were made to the PS&amp;E Checklist instructions:</p> <ul style="list-style-type: none"> <li>List item I. “Highway System,” included the ...“<i>Section 3.3</i>”.... cited.</li> <li>List items IV. A and B replaced “<i>State-Authorized</i>” and “<i>Full Oversight</i>” with “<i>Delegated</i>” and “<i>High Profile,</i>” respectively, to define to what degree the FHWA oversight is required.</li> <li>List item XII.E. included UDBE contract goals and good faith efforts requirements.</li> <li>List item XII.J. added instructions for ARRA.</li> </ul> <p>Pages were shifted as a result of the changes made to this exhibit.</p>
<b>Exhibit 12-E Attachment B</b> <b>pages 12-77, 78, 78a,78b</b>	<p>Updated the attachment on “Minority Utilization Goals.”</p> <p>Included “ <i>Training Special Provisions</i>” as part of Attachment B.</p>
<b>Exhibit 12-E Attachment H, I, J, K, L, N.</b> <b>pages 12-91 thru 104b, 107, 108</b>	<p>Updated the attachments to add the language on UDBE goal and good faith efforts requirements.</p> <p>Added information on “<i>American Recovery And Reinvestment Act (ARRA) Monthly Employment Report.</i>”</p> <p>Deleted Exhibit 12 E, Attachment N “<i>Federal Requirement Training Special Provisions</i>” and included the “<i>Training Provision</i>” under Attachment B (see Attachment B).</p>
<b>Chapter 13 Table of Contents</b>	Updated the TOC to reflect the changes made.
<b>Chapter 13 Section 13.1 (General),</b> <b>pages 13-1 thru 6</b>	<p>Under “General,” added, the first, second and third paragraph to clarify the use of Chapter 13 of the LAPM and the <i>Caltrans Right of Way Manual</i>.</p> <p>Pages were renumbered due to the changes made to this section.</p>
<b>Section 13.10 (Right of Way Certification),</b> <b>pages 13-20, 21</b>	<p>Under “Certification Forms,” deleted reference to DLA web site.</p> <p>Under “Utility Relocation” revised the second paragraph to explain when not to use the “<i>NO Right of Way Certification.</i>”</p>

<b>Exhibit 13-A, pages 13-43, 44</b>	Updated the exhibit. The existing language used in Exhibit 13-A is confusing and makes allowance for utility relocation work. This form should only be used when there is absolutely no R/W involvement, including any utility relocation, which is considered R/W involvement.
<b>Chapter 15 Table of Contents</b>	Updated the TOC to reflect the changes made.
<b>Section 15.2 (Definition of Terms) pages 15-2 thru 5</b>	Updated the list of defined terms to include “AC,” “ <i>Underutilized Disadvantaged Business Enterprise (UDBE)</i> ” and redefined DBE.  Pages were shifted as a result of the changes made to this section.
<b>Section 15.5 (Contract Bid Opening) pages 15-8 thru 12</b>	Included in the bulleted items under “Requirements”... “ <i>Failure to commit to the achievement of the UDBE contract goals or demonstrate good faith efforts to do so.</i> ”  Under “Procedures” the following changes were made: <ul style="list-style-type: none"> <li>• References to ...“<i>Proposals</i>” were replaced with “<i>Bids</i>.”</li> <li>• Two new forms were included in the bulleted items: “<i>Exhibit 15-G1</i>” and “<i>Exhibit 15-G2</i>” to be retained in the project profile by the administering agency with the rest of the completed documents for the successful bidder.</li> <li>• Deleted the bulleted item “<i>A Bid Price Data (FHWA Form 45)</i>.” This form is no longer required for submission to the DLAE.</li> <li>• Corrected exhibit titles.</li> </ul>
<b>Section 15.6 (Contract Award) page 15-12</b>	Third paragraph under “Bid Analysis Process,” replaced the web page to: “ <a href="http://www.dot.ca.gov/hq/esc/oe/awards/#item_code">http://www.dot.ca.gov/hq/esc/oe/awards/#item_code</a> .”
<b>Section 15.7 (Award Package) page 15-15</b>	Deleted the first bulleted item and added two bullets to include “ <i>Exhibits 15-G1</i> ” and “ <i>Exhibit 15-G2</i> ” as part of the package submitted by the administering agency to the DLAE immediately after award of the contract prior to submitting the first invoices of the construction phase.
<b>Section 15.8 (References) page 15-16</b>	Updated the list of references.

<b>Exhibit 15-A</b> <b>pages 15-17, 18</b>	Under item list B. “Contract Bid Opening,” added check box for “ <i>Exhibits 15-G1.</i> ”  Under item list C. “Contract Award,” added check box for “ <i>Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2)</i> ” to be forwarded to the DLAE.
<b>Exhibit 15-B</b> <b>pages 15-19 thru 22</b>	The following changes were made to this exhibit: <ul style="list-style-type: none"> <li>• Moved the “Distribution” list to the bottom left side on page 15-19.</li> <li>• Item list no. 11. “OJT,” added questions in the first check box.</li> <li>• Item list no. 12. “DBE,” deleted check box on “<i>Local Agency’s Annual Anticipated DBE Participation Level</i>”; added check boxes for “<i>UDBE Contract Goal Percentage</i>” and for “<i>Verified that copies of the completed local Agency</i>”.... ; corrected the titles of Exhibits 15-G1 and added a check box for Exhibit 15-G2.</li> </ul>
<b>Exhibit 15-F</b> <b>page 15-29</b>	Deleted this exhibit, this form is no longer required.
<b>Exhibits 15-G1, 15-G2</b> <b>pages 15-31 thru 32b</b>	Revised this exhibit to include UDBE goal commitment and added a new Exhibit 15-G2 to collect DBE participation towards the Race Neutral portion of the AADPL. Included new “ <i>Instructions</i> ” for both forms.
<b>Exhibit 15-H</b> <b>pages 15-33 thru 34b</b>	Added a new “ <i>Exhibit 15-H, UDBE Information-Good Faith Efforts.</i> ”
<b>Exhibit 15-I</b> <b>page 15-35</b>	Updated the exhibit to include in the checklist “ <i>Local Agency Bidder UDBE Commitment (Construction Contracts).</i> ”
<b>Exhibit 15-L</b> <b>page 15-41</b>	Updated the exhibit to include in the checklist “ <i>Good Faith Effort Statement</i> ” ... and “ <i>Local Agency Bidder UDBE Commitment.</i> ”
<b>Chapter 16</b> <b>Table of Contents</b>	Updated the TOC to reflect the changes made.
<b>Exhibit 16-P</b> <b>page 16-79-80</b>	Added a new exhibit in Spanish version of Exhibit 16-N, “Employee Interview: Labor Compliance/EEO.”
<b>Chapter 17</b> <b>Table of Contents</b>	Updated the TOC to reflect the changes made.
<b>Section 17.2</b> <b>(Definition of Terms)</b> <b>Page 17-2 thru 4</b>	Updated this section to include “ <i>UDBE</i> ” in the list of defined terms.  Pages were shifted due to the revision made to this section.

<b>Section 17.5 (Report of Expenditures) page 17-5</b>	Under “Federal-aid Projects” corrected the exhibit title in the sixth bullet.
<b>Section 17.7 page 17-8</b>	Updated the list of references.
<b>Exhibit 17-F pages 17-21-22</b>	Modified the “ <i>Final Report-Utilization of DBE, First-Tier Subcontractors</i> ” and the “ <i>Instruction</i> ” to include UDBEs.

### **AUTHORITIES AND REFERENCES**

- 49 CFR, Part 26 and Part 27
- The Ninth Circuit Court of Appeals ruling on May 9, 2005, in the State of Washington (*Western States Paving Co. vs. Washington State Department of Transportation*)

## CHAPTER 3 PROJECT AUTHORIZATION

### 3.1 INTRODUCTION

#### GENERAL

Prior to beginning highway work for which federal reimbursement will be requested, the project or project phase must be formally authorized (approved) by the Federal Highway Administration (FHWA). Each federally funded phase of work such as: Preliminary Engineering (PE), Right of Way (R/W), Utility Relocation (R/W-UTIL), and Construction (CON) require a separate federal authorization (the authorization of federal funds may be subdivided within a phase as well). Any work performed prior to federal “Authorization to Proceed” is not eligible for federal reimbursement and may disqualify that phase. \*

On December 26, 2002, the FHWA and California Department of Transportation (Caltrans) entered into the current “Project Approval and Oversight Letter of Agreement.” This Agreement outlines the roles and responsibilities for oversight and approval of federally funded transportation projects under the jurisdiction of the FHWA. The Agreement defines the categories of projects subject to “Full Oversight” by the FHWA, as well as those categories that may be “State-Authorized.” On “Full Oversight” projects, Caltrans recommends federal authorization and the FHWA formally authorizes the work. For “State-Authorized” projects, the FHWA has delegated various project oversight and approval responsibilities to Caltrans, which includes the authority to federally authorize the project. The determination as to whether a project is subject to “Full Oversight” by the FHWA, or may be “State-Authorized” is based primarily on the following: 1) type of federal-aid route involved, 2) type of work, and 3) project costs (see Chapter 2, Figure 2-1, “FHWA Oversight” of the *Local Assistance Procedures Manual* [LAPM]). The federal authorization and oversight of complex and/or high-cost projects are handled on a project-by-project basis as agreed to by the FHWA, Caltrans, and the project sponsor.

*\* Exception – For Emergency Relief projects, prior FHWA approval is not required for Emergency Opening and Preliminary Engineering. Permanent Restoration work must have prior FHWA program approval and authorization, unless the work is done as part of Emergency Opening repairs.*

#### ACRONYMS

AC - Advance Construction  
CE - Construction Engineering  
CFR - Code of Federal Regulations  
CMAQ - Congestion Mitigation and Air Quality Improvement Program  
CON - Construction  
CTC - California Transportation Commission  
CTIPS - California Transportation Improvement Program System  
DBE - Disadvantaged Business Enterprise  
DLA - Caltrans Division of Local Assistance  
DLAE - Caltrans District Local Assistance Engineer

**DMT** - Caltrans Division of Mass Transportation  
**DTR** - Caltrans District Transit Representative  
**EA** - Expenditure Authorization Number (for accounting purposes)  
**ER** – Emergency Relief  
**E-76** - Electronic Authorization to Proceed  
**FADS** - Federal-Aid Data System (State Database)  
**FHWA** - Federal Highway Administration  
**FMIS** - Fiscal Management Information System (Federal Database)  
**FPN** - Federal Project Number  
**FSTIP** - Federal Statewide Transportation Improvement Program  
**FTA** - Federal Transit Administration  
**FTIP** - Federal Transportation Improvement Program  
**FFY** - Federal Fiscal Year  
**FY** - Fiscal Year (State)  
**HBP** - Highway Bridge Program  
**HES** - Hazard Elimination and Safety Program  
**IIP** - Interregional Improvement Program portion of STIP  
**ISTEA** - Intermodal Surface Transportation and Efficiency Act of 1991  
**ITS** - Intelligent Transportation Systems  
**LAPG** - Local Assistance Program Guidelines  
**LAPM** - Local Assistance Procedures Manual  
**LPA** - Local Programs Accounting Branch  
**LSSRP** - Local Seismic Safety Retrofit Program  
**MPO** - Metropolitan Planning Organization  
**NEPA** - National Environmental Policy Act  
**NBI** - National Bridge Inventory  
**NBIS** - National Bridge Inspection Standards  
**OA** - Obligation Authority  
**OFR** - Caltrans Office of Federal Resources  
**PA/ED** - Project Approval/Environmental Document  
**PE** - Preliminary Engineering  
**PPNO** - Project Planning Number  
**PSA** - Program Supplement Agreement  
**PS&E** - Plans, Specifications and Estimate  
**RIP** - Regional Improvement Program (Portion of STIP)  
**RSTP** - Regional Surface Transportation Program  
**RTPA** - Regional Transportation Planning Agency  
**R/W** - Right of Way



**SAFETEA-LU** - Safe, Accountable, Flexible, Efficient, Transportation Equity Act – A Legacy for Users

**SEMP** - Systems Engineering Management Plan

**SERF** - Systems Engineering Review Form

**SR2S** - Safe Routes to School Program

**STD** - State Transportation Department

**STIP** - State Transportation Improvement Program

**STP** - Surface Transportation Program

**TE** - Transportation Enhancements Program

**TEA-21** -Transportation Equity Act for the 21st Century

**UDBE** – Underutilized Disadvantaged Business Enterprise

**USC** - United States Code

## TERMS AND DEFINITIONS

**Allocation** - An administrative distribution of funds.

**Apportionment** - A statutorily prescribed division or assignment of funds. An apportionment is based on prescribed formulas in the law and consists of dividing authorized obligational authority for a specific program among the states.

**Authorization to Proceed** - Federal project funding eligibility approval for a particular phase of work by the Federal Highway Administration (FHWA).

**Disadvantaged Business Enterprise (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 lawfully admitted permanent residents 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 African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found to be socially and economically disadvantaged by the Small Business Administration (see CFR, Part 26).

**Construction Engineering** - Supervision and inspection of construction activities, additional staking functions considered necessary for effective control of the construction operations, testing materials incorporated into construction, checking shop drawing, and measurements needed for the preparation of pay estimates.

**E-76** - Federal-aid Program Document titled: “Authorization to Proceed” Form. It provides federal authorization to begin reimbursable work for a specific phase of work.

**Federal Fiscal Year** - The accounting period for the federal budget. The Federal Fiscal Year (FFY) is from October 1 until September 30. The FFY is designated by the calendar year in which it ends. For example, FFY 06 runs from October 1, 2005, until September 30, 2006.

**Finance Letter** - Project funding summary document required by Local Programs Accounting. It is prepared by the administering agency and submitted to Caltrans as backup information for the federal-aid/state project agreement.

**FSTIP** - Federal Statewide Transportation Improvement Program, a three-year list of all state and local transportation projects proposed for federal surface transportation funding and/or are considered regionally significant. This is developed by Caltrans in cooperation with MPOs/RTPAs and in consultation with local and other rural entities. The FSTIP, including FTIPs, requires FHWA/FTA approval.

**FTIP** - Federal Transportation Improvement Program, a three-year list of all transportation projects proposed for federal surface transportation funding within the planning area of one of the eighteen Metropolitan Planning Organizations (MPOs) in the state. These are only valid for reference when incorporated into the FSTIP and approved by FHWA/FTA (see Chapter 4 of the Caltrans Project Development Procedures Manual for more discussion).

**Full Oversight Projects** - Categories of projects subject to Full Oversight (review and approval) by the FHWA. Includes projects on the Interstate that are new or reconstruction (not 3R) greater than \$1 million as well as complex and high cost projects.

**LAPG** - The *Local Assistance Program Guidelines* manual provides local project sponsors with a complete description of the federal and state programs available for financing local public transportation related facilities.

**LAPM** - The *Local Assistance Procedures Manual* describes the processes, procedures, documents, authorization, approvals and certifications, which are required in order to received federal-aid and/or state funds for many types of local transportation projects.

**Local Agency** - A city, county or other public entity.

**Local Assistance Project** - A local surface transportation project funded with federal and/or state funds for the operation, maintenance, and acquisition or development of facilities or land, provided the local entity retains ownership after completion of the project. Examples include:

- Project on Local Street with federal CMAQ funds
- Project on Local Street with RIP (STIP) funds

**National Environmental Policy Act (NEPA)** - Federal environmental law requiring federal agencies to consider the environmental impacts of their actions, evaluate least damaging alternatives and ensure decisions are made in the public's best interest based on a balanced consideration of the need for safe and efficient transportation.

**Obligation** - The federal government's legal commitment (promise) to pay or reimburse the states or other entities for the federal share of a project's eligible costs.

**Obligation Authority (OA)** - Total amount of federal funds that may be obligated in a FFY.

**Overall Work Plan (OWP)** - The OWP is the MPO/RTPA's transportation planning structure/plan for the state fiscal year, July 1 through June 30.

**Preliminary Engineering (PE)** - This phase includes all project initiation and development activities (including NEPA approval) undertaken through the completion of PS&E. It may include preliminary Right of Way engineering and investigations necessary to comply with the provisions of NEPA.

**State-Authorized Project** - A classification of federal-aid projects, which are not subject to FHWA review and approval as required by Title 23 Code of Federal Regulations. For State-Authorized federal-aid projects the FHWA and Caltrans may exercise the maximum delegation of authority to local agencies (see Chapter 2, Section 2.4, "Stewardship - Letters of Agreement" and Figure 2-1, "FHWA Oversight").

**Underutilized Disadvantaged Business Enterprise (UDBE)** - A firm meeting the definition of a DBE as specified in 49 CFR, Part 26 and is one of the following groups: African Americans, Asian-Pacific Americans, Native Americans, and Women.

## 3.2 PRIOR TO FEDERAL AUTHORIZATION

Prior to federal authorization, all federally funded transportation projects must be included in the current federally approved Federal Transportation Improvement Program/Federal Statewide Transportation Improvement Program (FTIP/FSTIP). The FTIP/FSTIP (or amendment thereto) must identify scope of work, project location, project sponsor, federally funded phases of work, programmed FFY, and the types and amounts of federal funds. ER projects that involve substantial functional, locational, or capacity changes also must be included in the FTIP/FSTIP.

Non capacity increasing projects funded by the following federal programs are typically included in Caltrans' administered Lump Sum listing of projects. The following Lump Sum listings of projects are developed, in cooperation with the MPOs/RTPAs and local agencies:

- Highway Bridge Program (HBP previously HBRRP)
- Local Seismic Safety Retrofit Program (LSSRP)
- Highway Safety Improvement Program (HSIP)
- Safe Routes to School (SRTS) Program
- Railroad Grade Crossing Program

**Note:** *Transportation Enhancements (TE) funded projects are now programmed in the State Transportation Improvement Program (STIP) (see Chapter 23 "Local Agency State Transportation Improvement Projects," of the LAPG for requirements associated with federally funded STIP projects).*

Projects funded with regionally programmed Surface Transportation Program (STP) or Congestion Mitigation and Air Quality Improvement (CMAQ) funds may be included in a Regional Lump Sum listing of projects as adopted by the appropriate MPO/RTPA. The RTPA/MPO is responsible for project eligibility determination and financial constraint of the regional program. When a local agency requests federal authorization of a project, the MPO/RTPA's approved list of projects must be provided to the Caltrans District Local Assistance Engineer (DLAE).

Planning type projects funded with PL (MPO Planning Funds) or Section 5303 funds are not required to be listed in the FTIP/FSTIP when they do not lead to construction, however, these projects must then be included in a federally approved planning document such as Overall Work Plan (OWP).

Soon after a project is selected and programmed for inclusion or amended into the FTIP/FSTIP, the sponsoring agency should contact the Caltrans DLAE to discuss how and when they plan to proceed with project implementation. The discussion should cover the timing and process for the authorization/obligation of federal funds, whether a "Formal Field Review" is required or recommended (see Chapter 7, "Field Reviews," of the LAPM), and the California Transportation Commission (CTC) allocation(s) of STIP funds, if necessary.

If federally funded work is to be performed by a consultant or contractor, the local agency must have a Caltrans approved California Department of Transportation Disadvantaged Business Enterprise Implementation Agreement (Exhibit 9-A) and the approved Local Agency DBE Annual Submittal Form (Exhibit 9-B). The Local Agency DBE Annual Submittal Form is due to the DLAE by June 1 of each year for the following FFY. (See Chapter 9, “Civil Rights and Disadvantaged Business Enterprise,” of the LAPM.)

### 3.3 REQUEST FOR AUTHORIZATION

The project sponsor identified in the FTIP/FSTIP to receive the federal funds is responsible for requesting the Federal Authorization to Proceed. The project sponsor must prepare and submit a “Request for Authorization to Proceed” package to the appropriate Caltrans District Local Assistance Office. The request package should include, as a minimum, the agency’s “Request for Authorization to Proceed” (see Exhibits 3-A, B, C, or D), “Request for Authorization to Proceed Data Sheets(s)” (see Exhibit 3-E), and all required support documentations. The Caltrans District Local Assistance Office must submit to Caltrans Headquarters Division of Local Assistance (DLA), the “Federal Project Log Sheet” (Exhibit 3-G) with the appropriate documents attached.

If the Request for Authorization package is complete and all federal and state requirements have been satisfied, a minimum of three (3) weeks processing time should be allowed to receive federal Authorization to Proceed for “State-Authorized” projects. Another week or more may be required for “Full Oversight” projects that require FHWA authorization. Additional time may also be required near the beginning or end of the FFY.

If the “Request for Authorization to Proceed” package is incomplete, unacceptable or missing information that cannot be quickly obtained by FAX, telephone, e-mail, or other source, the package will be returned to the local agency for resubmittal.

### PRELIMINARY ENGINEERING

Eligible preliminary engineering (PE) work includes location and environmental studies, NEPA approval (Chapter 6, “Environmental Procedures,” of the LAPM), final design (Plans, Specifications and Estimate [PS&E]) and other related work including the cost of advertising leading to physical construction of a project. Preliminary R/W studies, as needed for NEPA compliance (see Chapter 13, “Right of Way,” of the LAPM), may be considered eligible and authorized as part of PE.

Only eligible work performed after the date of federal authorization is eligible for federal reimbursement. The preliminary studies portion of PE may be authorized prior to an optional or mandatory field review (see Chapter 7, “Field Reviews,” of the LAPM). This allows for the reimbursement of selecting consultants and other specialists who may be needed for field review. However, a completed Field Review form shall be submitted to Caltrans within four-months from the initial PE authorization. Otherwise, the authorization to proceed will be canceled automatically.

“Authorization to Proceed with PE” must lead to R/W acquisition or construction in a timely manner. Per 23 CFR 630.112 (c)(2), if R/W is not acquired or a construction contract is not awarded by the close of the tenth fiscal year following the year of PE authorization, any expended federal funds must be returned to the federal government, unless a time extension is granted by the FHWA.

**EXHIBIT 3-A REQUEST FOR AUTHORIZATION  
TO PROCEED WITH PRELIMINARY ENGINEERING***(Local Agency Letterhead)*

To: (DLAE Name)  
District Local Assistance Engineer  
Caltrans, Office of Local Assistance  
(District Address)

Date: \_\_\_\_\_  
FTIP/FSTIP ID: \_\_\_\_\_  
Federal Project No: \_\_\_\_\_  
EA: \_\_\_\_\_  
PPNO (For STIP Projects): \_\_\_\_\_  
Major ITS (Phase 1 or 2): \_\_\_\_\_  
Project Description: \_\_\_\_\_

Dear (DLAE Name):

In order to begin federally reimbursable preliminary engineering work for the above-referenced project, we request that you secure Federal Authorization to Proceed and Obligation of Funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Request for PE Authorization Data Sheet (Exhibit 3-E)
- ☐ Copy of FTIP/FSTIP Reference
- ☐ Completed Finance Letter (Exhibit 3-O)
- ☐ For Major ITS Projects – Phase 2 Only: FHWA approved Systems Engineering Management Plan (SEMP) (Note that federal approval of the SEMP is contingent on prior federal approval of the Systems Engineering Review Form [SERF])
- ☐ Copy of Executed Cooperative Agreement (only for projects on State Highway System)
- ☐ Request for Capital Subvention Reimbursement Allocation (Exhibit 3-H) (only for projects on State Highway System)

Field Review Form (Exhibit 7-B)

- ☐ Completed Field Review Form (Exhibit 7-B), or
- ☐ **A Field Review Form will be submitted within four (4) months of the Federal Authorization date, otherwise, it is understood the authorization to proceed will be canceled automatically. It is further understood that a Program Supplement Agreement will NOT be prepared until after the Field Review Form is submitted.**

Environmental Document

- ☐ Type of NEPA Document. Approval Date: \_\_\_\_\_
  - ☐ Categorical Exclusion (CE) Form
  - ☐ Findings of No Significant Impact (FONSI)
  - ☐ Record of Decision (ROD)
  - ☐ Re-evaluation
- ☐ This agency has not completed the environmental process. The NEPA Document will be submitted at a later date, prior to beginning of final design (PS&E).

Disadvantaged Business Enterprise (DBE)

- ☐ The Annual Anticipated DBE Participation Level (AADPL) for FFY \_\_\_\_\_ was approved by Caltrans on \_\_\_\_\_.
- ☐ All work for this phase of the project will be performed by local agency staff.
- ☐ For consultant contracts an Underutilized Disadvantaged Business Enterprise (UDBE) goal will be established for each contract and the Local Agency Proposer UDBE Commitment (Consultant Contracts) (Exhibit 10-O1) will be submitted with the proposal. Within 15 days of contract execution, the Local Agency Proposer DBE Information (Consultant Contracts) (Exhibit 10-O2) shall be forwarded to the DLAE.

Pre-Award Audit

- ☐ Completed Audit Disposition (Exhibit 10-K), or
- ☐ Audit Disposition was not completed because neither federal-aid nor state funds will be used to fund a consultant contract, or
- ☐ Pre-award audit was not performed because the consultant contract is for \$250,000 or less and does not meet the criteria outlined in Exhibit 10-K requiring pre-award audit, or
- ☐ Audit Disposition is not being submitted at this time. It will be submitted to the DLAE prior to entering a contract with the consultant(s).

California Transportation Commission (CTC) Allocation

- ☐ A CTC allocation is not required, or
- ☐ A CTC allocation of \$ \_\_\_\_\_ (federal/state) funds for the PA/ED and/or PS&E component(s) of work was made at the \_\_\_\_\_ meeting of the CTC, or
- ☐ A CTC allocation of funds has been scheduled for the \_\_\_\_\_ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" and Agency submittal of the "Field Review" form (Exhibit 7-B), a "Program Supplement Agreement" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are typically available for disbursement for a period of seven (7) and five (5) years respectively, from the beginning of the fiscal year(s) that those funds are appropriated in the State Budget Act, unless an extension is granted by the Department of Finance. It is anticipated that this phase of work will be completed by \_\_\_\_\_ (month, year).

Invoice Submittal

This Agency understands that only relocation work performed after federal "Authorization to Proceed" (E-76) is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or State approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended. If there are no eligible expenses, then a written explanation will be provided for that six (6) month period along with the target amount and date for the next invoice submittal.

**CERTIFICATION**

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated / encumbered as well as for all costs it incurred prior to receiving the FHWA issued "Authorization to Proceed." I further understand that all subsequent phases of the project will require a separate "Federal Authorization to Proceed."

For all ITS projects, I understand that our project shall be consistent with the Regional ITS Architecture, adhere to ITS Standards, and undergo Systems Engineering analysis. For Major ITS projects, I understand that this Agency shall not proceed with component detailed design until after FHWA approval of the SEMP and receipt of "Authorization to Proceed."

Please advise us as soon as the "Federal Authorization to Proceed" has been issued. You may direct any questions to:

\_\_\_\_ (Name of Local Agency Contact) at \_\_\_\_ (phone number and e-mail address) .

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Agency*

**Distribution:** DLAE

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**EXHIBIT 3-B REQUEST FOR AUTHORIZATION  
TO PROCEED WITH RIGHT OF WAY***(Local Agency Letterhead)*

To: (DLAE Name)  
District Local Assistance Engineer  
Caltrans, Office of Local Assistance  
(District Address)

Date: \_\_\_\_\_  
FTIP/FSTIP ID: \_\_\_\_\_  
Federal Project No: \_\_\_\_\_  
EA: \_\_\_\_\_  
PPNO (For STIP Projects): \_\_\_\_\_  
Project Description: \_\_\_\_\_  
\_\_\_\_\_

Dear (DLAE Name):

In order to proceed with right of way phase of work for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Request for R/W Authorization Data Sheet (Exhibit 3-E)
- ☐ Copy of FTIP/FSTIP Reference Sheet
- ☐ Completed Finance Letter (Exhibit 3-O)
- ☐ Copy of Executed Cooperative Agreement, if not previously submitted (only for projects on State Highway System)
- ☐ Request for Capital Subvention Reimbursement Authority (Exhibit 3-H) (only for projects on State Highway System)

Field Review Form (Exhibit 7-B)

- ☐ Completed Field Review Form (Exhibit 7-B), or
- ☐ The Field Review Form was submitted previously on \_\_\_\_\_.

Environmental Document

- ☐ Type of NEPA Document. Approval Date: \_\_\_\_\_.
- ☐ Categorical Exclusion (CE) Form
- ☐ Findings of No Significant Impact (FONSI)
- ☐ Record of Decision (ROD))
- ☐ Re-evaluation

Disadvantaged Business Enterprise (DBE)

- ☐ The Annual Anticipated DBE Participation Level (AADPL) for FFY \_\_\_\_\_ was approved by Caltrans on \_\_\_\_\_.
- ☐ All work for this phase of the project will be performed by local agency staff.
- ☐ For consultant contracts an Underutilized Disadvantaged Business Enterprise (UDBE) goal will be established for each contract and the Local Agency Proposer UDBE Commitment (Consultant Contracts) (Exhibit 10-O1) will be submitted with the proposal. Within 15 days of contract execution, the Local Agency Proposer DBE Information (Consultant Contracts) (Exhibit 10-O2 ) shall be forwarded to the DLAE.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- ☐ A CTC allocation is not required, or
- ☐ A CTC allocation of funds for the right of way component of work was made at the \_\_\_\_\_ meeting of the CTC, or
- ☐ A CTC allocation of funds has been scheduled for the \_\_\_\_\_ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" (and agency submittal of the "Field Review" form [Exhibit 7-B] if not previously submitted), a "Program Supplement Agreement" and/or state approved "Finance Letter" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are typically available for disbursement for a period of seven (7) and five (5) years respectively, from the beginning of the fiscal year(s) that those funds are appropriated in the State Budget Act, unless, an extension is granted by the Department of Finance. It is anticipated that this phase of work will be completed by \_\_\_\_\_ (month, year).

Invoice Submittal

This Agency understands that only work performed after federal "Authorization to Proceed" (E-76) is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or state approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended. If there are no eligible expenses, then a written explanation will be provided for that six (6) month period along with the target amount and date for the next invoice submittal.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered as well as for all costs it incurred prior to receiving the Federal Highway Administration issued "Authorization to Proceed."

Please advise us as soon as the Authorization to Proceed has been issued. You may direct any questions to:

\_\_\_\_ (Name of Local Agency Contact) at \_\_\_\_ (phone number and e-mail address) .

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Agency*

**Distribution:** DLAE

**EXHIBIT 3-C REQUEST FOR AUTHORIZATION  
TO PROCEED WITH UTILITY RELOCATION****(Local Agency Letterhead)**

To: (DLAE Name)  
District Local Assistance Engineer  
Caltrans, Office of Local Assistance  
(District Address)

Date: \_\_\_\_\_  
FTIP/FSTIP ID: \_\_\_\_\_  
Federal Project No: \_\_\_\_\_  
EA: \_\_\_\_\_  
PPNO (For STIP Projects): \_\_\_\_\_  
Project Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear (DLAE Name):

In order to proceed with Utility Relocation phase of work for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Request for R/W Authorization Form (Exhibit 3-B)
- ☐ Request for Authorization Data Sheet (Exhibit 3-E)
- ☐ Copy of FTIP/FSTIP Reference Sheet
- ☐ Completed Finance Letter (Exhibit 3-O)
- ☐ Copy of Executed Cooperative Agreement, if not previously submitted (only for projects on State Highway System)
- ☐ Request for Capitol Subvention Reimbursement Authority (Exhibit 3-H) (only for projects on State Highway System)

Field Review Form (Exhibit 7-B)

- ☐ Completed Field Review Form (Exhibit 7-B), or
- ☐ The Field Review Form was submitted previously on \_\_\_\_\_.

Environmental Document

- ☐ Type of NEPA Document. Approval Date: \_\_\_\_\_.
- ☐ Categorical Exclusion (CE) Form
- ☐ Findings of No Significant Impact (FONSI)
- ☐ Record of Decision (ROD)
- ☐ Re-evaluation/Revalidation Form

Disadvantaged Business Enterprise (DBE)

- ☐ The Annual Anticipated DBE Participation Level (AADPL) for FFY \_\_\_\_\_ was approved by Caltrans on \_\_\_\_\_.
- ☐ All work for this phase of the project will be performed by local agency staff.

- ☐ For consultant contracts an Underutilized Disadvantaged Business Enterprise (UDBE) goal will be established for each contract and the Local Agency Proposer UDBE Commitment (Consultant Contracts) (Exhibit 10-O1) will be submitted with the proposal. Within 15 days of contract execution, the Local Agency Proposer DBE Information (Consultant Contracts) (Exhibit 10-O2) shall be forwarded to the DLAE.

Utility Relocation

- ☐ This Agency agrees to comply with 23 CFR 645.119 “Alternate Procedure” (as explained in Chapter 13, “Right of Way,” and Chapter 14, “Utility Relocations,” of the LAPM). This alternate procedure is provided to simplify the processing of utility relocations or adjustments under the provisions of 23 CFR 645. Under this procedure, the FHWA authorized the Department of Transportation (Caltrans) to act in relative position of the FHWA for review and approval of the arrangements, fees, estimates, plans, utility agreements, and other related matters required by such regulation as prerequisites for authorizing the utility owner to proceed with and complete the work.

It is understood that the scope of the Department’s approval authority under the Alternate Procedure includes all actions necessary to advance and complete all types of utility work under the provisions of such regulation, except Section 645.119 (B)(1) and 645.119 (b)(2). Two of such documents that need the Department’s approval are FHWA Specific Authorization and FHWA Approval of the Utility Agreement(s). See Chapter 14, “Utility Relocations,” of the LAPM for more information on the activities necessary for federal participation in utility relocations. The approval authority has been delegated to the Right of Way District Utility Coordinators.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- ☐ A CTC allocation is not required, or
- ☐ A CTC allocation of funds for the right of way component of work was made at the \_\_\_\_\_ meeting of the CTC, or
- ☐ A CTC allocation of funds has been scheduled for the \_\_\_\_\_ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the “Authorization to Proceed” (and agency submittal of the “Field Review” form [Exhibit 7-B]), if not previously submitted), a “Program Supplement Agreement” and/or state approved “Finance Letter” will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are typically available for disbursement for a period of seven (7) and five (5) years respectively, from the beginning of the fiscal year(s) that those funds are appropriated in the State Budget Act, unless an extension is granted by the Department of Finance. It is anticipated that this phase of work will be completed by \_\_\_\_\_ (month, year).

Invoice Submittal

This Agency understands that only relocation work performed after federal “Authorization to Proceed” (E-76), approval of the Specific Authorization, and appropriate Utility Agreement is eligible for reimbursement. Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed “Program Supplement Agreement” and/or state approval Finance Letter. In addition, it is also understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended. If there are no eligible expenses, then a written explanation will be provided for that six (6) month period along with the target amount and date for the next invoice submittal.

CERTIFICATION

I certify that the facts and statements in this Request for Authorization Package are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered, as well as, for all costs it incurred prior to receiving the FHWA issued Authorization to Proceed

Please advise us as soon as the Authorization to Proceed has been issued. You may direct any questions to:

\_\_\_\_ (Name of Local Agency Contact) \_\_\_\_ at \_\_\_\_ (phone number and e-mail address) \_\_\_\_ .

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Agency*

**Distribution:** DLAE

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**EXHIBIT 3-D REQUEST FOR AUTHORIZATION TO PROCEED WITH CONSTRUCTION****(Local Agency Letterhead)**

To: (DLAE Name)  
 District Local Assistance Engineer  
 Caltrans, Office of Local Assistance  
 (District Address)

Date: \_\_\_\_\_  
 FTIP/FSTIP ID: \_\_\_\_\_  
 Federal Project No: \_\_\_\_\_  
 EA: \_\_\_\_\_  
 PPNO (For STIP Projects only): \_\_\_\_\_  
 Project Description: \_\_\_\_\_

Dear (DLAE Name):

In order to advertise, award and administer the construction contract for the above-referenced project, we request that you secure Federal Authorization to Proceed and obligation of funds. The federal funds requested will not exceed those provided to this agency in the federally approved Federal Transportation Improvement Program (FTIP)/Federal Statewide Transportation Improvement Program (FSTIP).

Attached are the following documents required to authorize this phase of work:

Request for Authorization Package

- ☐ Completed Request for Construction Authorization Data Sheet (Exhibit 3-E)
- ☐ Copy of FTIP/FSTIP Reference Sheet
- ☐ Completed Finance Letter (Exhibit 3-O)
- ☐ Copy of Executed Cooperative Agreement (only for projects on State Highway System)
- ☐ Request for capital Subvention Reimbursement Authority (Exhibit 3-H) (only for projects on State Highway System)

Field Review Form (Exhibit 7-B)

- ☐ Completed Field Review Form (Exhibit 7-B), or
- ☐ The Field Review form previously was submitted on \_\_\_\_\_.

Environmental Document

- ☐ Type of NEPA Document. Approval Date: \_\_\_\_\_.
- ☐ Categorical Exclusion (CE) Forms
- ☐ Findings of No Significant Impact (FONSI)
- ☐ Record of Decision (ROD)
- ☐ Re-evaluation

Disadvantaged Business Enterprise (DBE)

- ☐ The Annual Anticipated DBE Participation Level (AADPL) for FFY \_\_\_\_\_ was approved by Caltrans on \_\_\_\_\_.
- ☐ All work for this phase of the project will be performed by local agency staff.
- ☐ For construction contracts an Underutilized Disadvantaged Business Enterprise (UDBE) goal will be established for each contract and the Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1) will be submitted with each bid by the bidders. Within 15 days of contract execution, the Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2) shall be forwarded to the DLAE.

Right of Way Certification (Exhibits 13-A or 13-B)

- ☐ Right of Way Certification # \_\_\_\_\_ which was approved on \_\_\_\_\_.
- ☐ Right of Way Certification # \_\_\_\_\_ was approved on \_\_\_\_\_ and previously submitted.

PS&E Package and PS&E Certification

- ☐ Completed PS&E package, PS&E Certification (Exhibit 12-C), and PS&E Checklist (Exhibit 12-D), or
- ☐ The PS&E package, PS&E Certification, and PS&E Checklist were submitted and accepted on \_\_\_\_\_.

Local Agency Construction Contract Administration Checklist

- ☐ Local Agency Construction Contract Administration Checklist (Exhibit 15-A), or
- ☐ The Local Agency Construction Administration Checklist was submitted previously and our procedures have not changed.

California Transportation Commission (CTC) Allocation

Check which of the following applies:

- ☐ A CTC allocation is not required, or
- ☐ A CTC allocation of funds for the construction component of work was made at the \_\_\_\_\_ meeting of the CTC, or
- ☐ A CTC allocation of funds has been scheduled for the \_\_\_\_\_ meeting of the CTC. It is understood that the authorization/obligation of any federal STIP funds will not be made until after the CTC allocation.

Project Agreement and Liquidation of Funds

Upon FHWA issuance of the "Authorization to Proceed" (and agency submittal of the "Field Review" form [Exhibit 7-B], if not previously submitted), a "Program Supplement Agreement" and/or state approved "Finance Letter" will be prepared to encumber the federal and/or state funds for the project. This Agency understands that any federal and/or state funds encumbered for the project are typically available for disbursement for a period of seven (7) and five (5) years respectively, from the beginning of the fiscal year(s) that those funds are appropriated in the State Budget Act, unless an extension is granted by the Department of Finance. It is anticipated that this phase of work will be completed by  (month, year)

Invoice Submittal

This Agency understands that project construction contracts advertised prior to federal authorization are NOT eligible for reimbursement. It is also understood that construction-engineering cost must be specifically included and authorized in the federal Authorization to Proceed with Construction to be eligible for reimbursement. If construction engineering (CE) is authorized after construction begins, only those construction-engineering costs incurred after the date the CE is authorized are eligible for reimbursement.

Invoices for reimbursement will not be submitted until after the federal and state (if applicable) funds are encumbered via an executed "Program Supplement Agreement" and/or state approved Finance Letter. It is understood that an invoice must be submitted at least once every six (6) months for each project phase until all funds are expended. If there are no eligible expenses then a written explanation will be provided for that six (6) month period along with the target amount and date for the next invoice submittal.

CERTIFICATION

I certify that the facts and statements in this "Request for Authorization Package" are accurate and correct. This Agency agrees to comply with the applicable terms and conditions set forth in Title 23, U.S. Code, Highways, and the policies and procedures promulgated by the Federal Highway Administration and California Department of Transportation relative to the above-designated project.



I understand that upon submittal of this request and a completed "Field Review" form, the federal and/or state funds will be encumbered via a Program Supplement Agreement and /or state approved Finance Letter. This Agency will comply with the liquidation deadlines as explained in Government Code 16304.

I understand that this Agency is responsible for all costs in excess of the federal and/or state funds obligated/encumbered and all costs it incurred prior to receiving the FHWA issued "Authorization to Proceed" for this phase of the project

Please advise us as soon as the "Authorization to Proceed" has been issued. You may direct any questions to:

\_\_\_\_ (Name of Local Agency Contact) \_\_\_\_ at \_\_\_\_ (phone number and e-mail address) \_\_\_\_.

\_\_\_\_\_  
*NAME*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Agency*

**Distribution:** DLAE

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**EXHIBIT 3-E - REQUEST FOR AUTHORIZATION TO PROCEED DATA SHEET(S)****PROJECT REFERENCE DATA**

DIST-CO-RTE-AGENCY: \_\_\_\_\_  
 FEDERAL PROJECT NO.: \_\_\_\_\_  
 CALTRANS EA: \_\_\_\_\_

FTIP / FSTIP ID: \_\_\_\_\_  
 PPNO (STIP): \_\_\_\_\_  
 CTIPS REFER. NO.: \_\_\_\_\_  
 BRIDGE NO.(s): \_\_\_\_\_

**RESPONSIBLE/IMPLEMENTING AGENCY**

RESPONSIBLE AGENCY: \_\_\_\_\_ IMPLEMEN. AGENCY: \_\_\_\_\_

**PROJECT DESCRIPTION**

PROJECT TITLE: \_\_\_\_\_  
 WORK DESCRIPTION: \_\_\_\_\_

**PROJECT LOCATION**

PROJECT LOCATION: \_\_\_\_\_

URBAN (IZED) AREA: \_\_\_\_\_ INDIAN RESERV. : (Y/N) \_\_\_\_\_  
 CONG. DIST. & %'s: \_\_\_\_\_ TOLL ROAD: (Y/N) \_\_\_\_\_  
 RURAL (Y/N): \_\_\_\_\_

**FEDERAL AID ROUTE**

FED-AID SYSTEM: (Y/N) \_\_\_\_\_ FUNCIONAL CLASSIF.: \_\_\_\_\_  
 STATE HWY: (Y/N) \_\_\_\_\_ STATE ROUTE: \_\_\_\_\_

**ADMINISTERING AGENCY**

LOCAL or CALTRANS (CT): \_\_\_\_\_ IF CT, PROJ. MANAGER: \_\_\_\_\_

**THIS FEDERAL AUTHORIZATION REQUEST**

OVERSIGHT: ☐ STATE-AUTHORIZED or ☐ FULL OVERSIGHT  
 ADV. CON. (Y/N): \_\_\_\_\_ 100% SAFETY (Y/N): \_\_\_\_\_

**COST SUMMARY:**

<u>PHASE OF WORK</u>	<u>TOTAL</u>	<u>FED PART</u>	<u>FED 1</u>	<u>FED 2</u>	<u>STATE</u>	<u>OTHER</u>	<u>LOCAL</u>
PREV. OBLIG	_____	_____	_____	_____	_____	_____	_____
THIS REQUEST	_____	_____	_____	_____	_____	_____	_____
SUBTOTAL	_____	_____	_____	_____	_____	_____	_____
<u>PHASE OF WORK</u>	<u>TOTAL</u>	<u>FED PART</u>	<u>FED 1</u>	<u>FED 2</u>	<u>STATE</u>	<u>OTHER</u>	<u>LOCAL</u>
PREV. OBLIG	_____	_____	_____	_____	_____	_____	_____
THIS REQUEST	_____	_____	_____	_____	_____	_____	_____
SUBTOTAL	_____	_____	_____	_____	_____	_____	_____
TOTAL	_____	_____	_____	_____	_____	_____	_____

**FEDERAL DEMONSTRATION PROJECT INFORMATION**

PUBLIC LAW, SECTION: \_\_\_\_\_ FEDERAL DEMO ID: \_\_\_\_\_  
 LEGISLATIVE. PROJECT NO.: \_\_\_\_\_ ESTIM. CONST. DATE: \_\_\_\_\_  
 RELATED DEMO PROECTS: \_\_\_\_\_

**Exhibit 3-E**  
**Request for Authorization to Proceed Data Sheet(s)**

**Local Assistance Procedures Manual**

**FTIP / ESTIP DATA**

MPO/RTPA NAME: \_\_\_\_\_ FTIP / ESTIP YEAR: \_\_\_\_\_  
FED. FUNDED PHASES: \_\_\_\_\_ SHEET OR AMD. NO.: \_\_\_\_\_  
APPROVAL DATE: \_\_\_\_\_  
FED FUND TYPES/TOTALS: \_\_\_\_\_ APPRV'D EPSP (Y or N): \_\_\_\_\_

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUBMITTALS:**

Race Conscious Implementation Agreement (Exhibit 9-A) CT APPROVAL DATE: \_\_\_\_\_  
Local Agency DBE Annual Submittal Form (Exhibit 9-B):  
FED FISCAL YEAR: \_\_\_\_\_ CT APPROVAL DATE: \_\_\_\_\_

**INITIAL AUTHORIZATION & ESTIMATED COMPLETION DATES**

<u>PHASE OF WORK</u>	<u>INITIAL FEDERAL AUTHORIZATION DATE</u>	<u>ESTIMATED COMPLETION DATE</u>
PE	_____	_____
RW	_____	_____
CON	_____	_____

**ENVIRONMENTAL DATA**

NEPA DOCUMENT TYPE:

<input type="checkbox"/> CE	_____	Date Caltrans SEP/DLAE signed CE Form (use the latest date)
<input type="checkbox"/> EA / FONSI	_____	Date Caltrans DD (DDD or designee) signed the FONSI
<input type="checkbox"/> EIS / ROD	_____	Date Caltrans signed the ROD
EIS Number	_____	Year of Public Release of EIS and EIS number (assigned by FHWA)
AIR BASIN	_____	(For CMAQ Program Funds)

**R/W ESTIMATE**

R/W ACQ PARCELS: \_\_\_\_\_ \$ \_\_\_\_\_  
RAP (FAMILY): \_\_\_\_\_ \$ \_\_\_\_\_  
(BUSINESS): \_\_\_\_\_ \$ \_\_\_\_\_  
LRH/HRDSHP: \_\_\_\_\_ \$ \_\_\_\_\_  
UTILITIES: \_\_\_\_\_ \$ \_\_\_\_\_  
SUPPORT: \_\_\_\_\_ \$ \_\_\_\_\_  
TOTAL: \_\_\_\_\_ \$ \_\_\_\_\_

**UTILITY RELOCATION / ADJUSTMENTS**

<u>UTILITY OWNER</u>	<u>UTILITY TYPE</u>	<u>COST TO RELOCATE</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL UTILITY RELOCATION COSTS		_____

**DESCRIPTION OF R/W PARCELS BY TYPE OF ACQUISITION/ACTIVITY**

<u># PARCELS</u>	<u>ACQUISITION TYPE AND/OR ACTIVITY</u>	<u># ACRES</u>	<u>EST. COST</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**R/W CERTIFICATION**

R/W CERT. NO. \_\_\_\_\_ Date Approved by Caltrans: \_\_\_\_\_

**LOCAL AGENCY COMMENTS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THIS REQUEST PREPARED BY:**

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PHONE NO.: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

**AGENCY CONTACT FOR PROGRAM SUPPLEMENT AGREEMENT**

NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PHONE NO.: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

**Distribution:** DLAE

**Indian Reservation:** Indicate (Y/N) whether or not the project is located on an Indian Reservation.

**Congressional Districts:** Enter the congressional district(s) that are impacted by the project and the percentage of funds for each district.

**Toll Road:** Indicate (Y/N) if a toll road is involved. To monitor toll road projects or work performed on toll roads, enter a “Y.”

**Rural Area:** Defines as an area having a population of less than 50,000.

**Federal-Aid System:** Indicate the federal-aid system on which the project is located. Valid entries are:

- Interstate
- NHS Non-Interstate
- Other Federal-aid System
- Not on Any Federal-aid System

**Functional Classification:** Streets and highways are grouped into classes or systems according to the character of service they provide. If there are multiple functional classifications involved, enter the higher classification. Valid entries for functional classification are:

- Freeway and Expressway
- Principal Arterial
- Minor Arterial
- Major Collector Minor Collector
- Local
- No Functional Class

**State Highway:** Indicate (Y/N), whether or not the project is located within the right of way limits of an existing or proposed state highway. If so, enter the State Highway Route number (e.g., I-405).

**Administering Agency (Local or Caltrans):** Indicate the name of the agency administering the project. If the project is located on a state highway and Caltrans is the project administrator, enter the name of the Caltrans Project Manager.

**FHWA Oversight:** Indicate whether or not this project may be “State-Authorized” or is subject to FHWA “Full-Oversight” (see Figure 2-1 FHWA Oversight, Chapter 2 of the LAPM). Projects that may be “State Authorized” include: 1) all projects off the Interstate System, 2) all projects on Interstate System with an estimated construction cost less than \$1,000,000, and 3) all Interstate 3R projects regardless of cost. Per current “Project Approval and Oversight Letters of Agreement between the Federal Highway Administration and the California Department of Transportation” certain types of projects, regardless of location and cost, may not be exempt from FHWA oversight. These include: 1) Major ITS projects (a description of major ITS projects can be found in Title 23 Code of Federal Regulations (CFR) Section 940, 2) Major projects receiving federal funds of \$500 million or more, 3) Projects of National Significance under the Transportation Infrastructure Finance Innovation Act (TIFIA) of 1998, and 4) unusual bridges and structures. Oversight roles on these special categories of projects must be negotiated and agreed to by the FHWA, Caltrans, and project sponsor prior to submittal of the Request for Authorization to Proceed.

**Advance Construction Authorization:** Indicate (Y/N) whether or not an Advance Construction Authorization is being requested. If so, a local agency must submit a “Request for Advance Construction Authorization” form (see Exhibit 3-I).

**100% Safety Eligible:** Indicate (Y/N), whether or not this project is using 100% Safety funds in accordance with Title 23 of United States Code (U.S.C.) Section 120.

**Cost Summary:** Identify all project-related costs through the current request. The “TOTAL” cost of work is the sum of both the total federal participating and nonfederal participating project costs. The “federal participating” cost is equal to the cost of all work eligible for federal participation. Identify the “federal funding program and dollar amount” for each phase of work. Identify the funds previously obligated as well as these funds current request. The total federal funds obligated should not exceed the funds programmed in the federally approved FTIP/FSTIP (unless

prior approval is received from appropriate MPO/RTPA), Caltrans Administered Federal Program (such as Bridge, Safety) or allocated by the FHWA (discretionary/earmarked federal funds).

Finally, enter the “LOCAL” and/or other types of federal matching funds. Identify previous obligations and the current request for each phase of work. (If more space is needed, use a separate sheet of paper.)

**Public Law, Section, and Legislated Project No:** Identify the Public Law, Section and Legislated Project No. identifying to DEMO project.

**Federal DEMO ID:** This five (5) character alphanumeric identifier is required for all Demonstration (DEMO) funded projects. The first two characters are alpha (represent name of state) and the last three (3) characters are numeric (sequential number for the state), e.g., CA015, CA016.

The federal DEMO ID is assigned by the FHWA and relates to a specific DEMO project identified in public law. The DEMO ID is listed in the allocation memo to the FHWA Division office in Sacramento from the FHWA in Washington, D.C.

**(DEMO) Estimated Construction Date:** Enter the estimated start date (MM/YYYY) of physical construction for the DEMO project with its appurtenant facilities. This information must be reported for all DEMO funded projects. This includes any removal, adjustment or demolition of buildings or major obstructions, and utility or railroad work that is a part of the contract for physical construction.

**Related DEMO Project(s):** Occasionally, a DEMO funded transportation project is funded by multiple DEMO IDs. FHWA administrative procedures require that a separate federal project numbers be established for each DEMO ID to facilitate the tracking of federal funds on a DEMO ID basis. For projects funded with multiple DEMO IDs, cross-reference any directly related FPNs.

**MPO/RTPA:** Enter the name of the Metropolitan Planning Organization (MPO) or Regional Transportation Planning Agency (RTPA) within which the project is located.

**Federal Funded Phases:** Identify the project phases of work programmed to receive federal funds in the FTIP/FSTIP.

**Federal Fund Types:** Identify all fund types by federal or state program (e.g. STPL, CMAQ, HBP, STIP, etc.) and amounts programmed for the project.

**FTIP/FSTIP/Year and No.:** Enter the Federal Fiscal Year the FTIP/FSTIP was approved. For amendments to the FTIP/FSTIP, enter the amendment number and approval date. Federal Fiscal Year 2003/2004 is identified as 03/04

**Approval Date:** Enter the date that the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) approved the FTIP or FSTIP (or amendment thereto) for the work being authorized. Enter the date in a MM/DD/YY (i.e., 10/05/02) format.

**Approved Expedited Project Selection Procedures (EPSP):** Indicate (Yes or No) whether or not Caltrans has approved the appropriate MPO/RTPA’s EPSP.

**Disadvantage Business Enterprise (DBE) Submittals:** Enter the Caltrans Approval date of the California Department of Transportation DBE Implementation Agreement for Local Agencies (Exhibit 9-A). Enter the Caltrans Approval date for the current FFY Local Agency DBE Annual Submittal Form (Exhibit 9-B). The Local Agency must have a completed California Department of Transportation DBE Implementation Agreement for Local Agencies, and the current FFY Local Agency DBE Annual Submittal Form approved by Caltrans prior to the Agency’s initial request for federal authorization. For this reason, the approval process for submitting the Local Agency DBE Annual Submittal Form should start well in advance of the planned date of first federal authorization. The approval date should be entered in a MM/DD/YY (i.e., 09/20/06) format.

**Initial Federal Authorization Dates:** Enter the federal authorization date for each phase of work as the project progresses through the project development process. This date represents the eligibility date for the start of federally reimbursable work. Federally reimbursable work may begin on the date that the FHWA (Sacramento) approves/authorizes (via electronic signature) the E-76. Work done prior to the FHWA authorization date shown on the E-76 will not be federally reimbursable.

## AWARD PACKAGE

The local agency must submit a complete Award Package to the DLAE immediately after the award of the construction contract. A copy of the Award Package **must also be included** with the local agency's **first invoice for construction** to LPA at:

Department of Transportation  
Division of Accounting  
Local Program Accounting Branch - MS 33  
Attn: Invoice Control  
P.O. Box 942874  
Sacramento, CA 94274-0001

If LPA does not receive a copy of the award package with the first invoice for the construction phase, the invoice will be returned to the local agency unpaid.

For construction work involving force account, the submittal of the award package is required if the work is contracted out to a contractor. No award package is required if the local agency utilizes its own work force. In this case, submit a brief memo explaining why the award package is not included.

**The Award Package for Federal-Aid projects includes the following:**

1. Local Agency Contract Award Checklist (LAPM, Exhibit 15-L) with attachments
2. Detail Estimate (LAPM, Exhibit 15-M)
3. Finance Letter (LAPM, Exhibit 15-N)
4. Resident Engineer's Construction Contract Administration Checklist (LAPM, Exhibit 15-B)
5. Local Agency Bidder DBE Information (Construction Contracts) (LAPM, Exhibit 15-G2).

**Award Package for State Transportation Improvement Program (STIP) projects**

The Award Package for state-only funded construction contract shall consist of the completed Award Information for STIP projects. (See LAPG, Chapter 23, Exhibit 23-A "Award Information for STIP Projects").

## 5.3 REIMBURSABLE PROJECT COSTS

The costs of salaries, wages and related project costs may be reimbursable for the following activities. All costs must be broken down into eligible direct and/or indirect cost components.

## PHASES OF WORK

1. **Preliminary Engineering**: Preliminary Engineering is the initiation, design, and related work preparatory to the advancement of a project to physical construction. For local STIP Projects, the Preliminary Engineering costs must be segregated into:
  - Environmental Studies and Permits
  - Plans, Specifications & Estimate

2. **Right of Way**: Acquisition of right of way, real property, or rights thereto is included. It also includes the preparation of right of way plans, making economic studies and other related preliminary work, appraisal for parcel acquisition, review of appraisals, preparation for and trial of condemnation cases, management of properties acquired, furnishing of relocation advisory assistance, utility relocation, and other related labor expenses.

Note: Right of Way rental income and the proceeds from the sale of excess land may be retained by local agencies **if it is used for a valid Title 23 purpose**. It is the local agency's responsibility to assure they comply with Title 23 if this option is selected.

For additional information about Right of Way topics, see LAPM, Chapter 13 "Right of Way."

3. **Construction Engineering**: Construction Engineering is the supervision and inspection of construction activities, additional staking functions considered necessary for effective control of the construction operations, testing materials incorporated into construction, checking shop drawing, and measurements needed for the preparation of pay estimates. **Construction Engineering costs must be listed on the "Authorization to Proceed" (E-76) to be eligible for reimbursement.**
4. **Construction**: Eligible construction costs include the actual costs to construct the transportation facility and its appurtenant facilities. It also includes: removal, adjustment or demolition of buildings or major construction; utilities or railroad work that is a part of the physical construction of the project; and administrative settlement cost of contract claims.
5. **Pre-award Audit Costs**: Pre-award audits are required for engineering and design related service contracts and subcontracts. See LAPM, Chapter 10 "Consultant Selection" for more information.
6. **Administrative Settlement Costs**: These are service costs related to contract claims related to the review and defense of claims against federal-aid-projects. See LAPM, Chapter 16 "Federal-Aid-Participation."



# CHAPTER 9 CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE

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## CHAPTER 9 CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE

### 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) web site at:

<http://www.dot.ca.gov/hq/LocalPrograms/> provides additional information and resources that complements guidance in this chapter.

### 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 (CFR), 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 has 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 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 “Master Agreement-Sample,” 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 Study (PES) Form,” and B “Instructions for Completing the Preliminary Environmental Study (PES) Form,” Chapter 6 of the LAPM or refer to this web site:

[http://www.dot.ca.gov/hq/LocalPrograms/lam/prog\\_p06envrp.pdf](http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_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/vol1/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 complaint procedures within each of the following R/W functions: Appraisals, Acquisition, Relocation Assistance Program (RAP) and Property Management (see Chapter 13, “Right of Way,” of the LAPM).

**Construction:** Federal-aid construction contracts must include provisions, which require compliance with Title VI. The specific contract provision language is included in the Federal Highway Administration (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](http://www.dot.ca.gov/hq/bep/title_vi/t6_guidelines_choice.htm).

Title VI brochures in ten languages are available on the DLA web site under Title VI:

[http://www.dot.ca.gov/hq/LocalPrograms/DBE\\_CRLC/DBE\\_CRLC.html#TitleVI](http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html#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 District Local Assistance Engineer (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 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 monitor R/W activities on local projects (see Chapter 12, “Plans, Specifications & Estimate,” of the LAPM.) to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

**Local Agency Construction Contract Administration Checklist:** This checklist confirms that DBE and 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.”

**Self Evaluation and Transition Plan:** 49 CFR, Part 27 requires local agencies as part of receiving US DOT federal financial assistance to:

1. evaluate their current policies and practices to ensure nondiscrimination on the basis of disability in the design, construction, and maintenance of transportation and pedestrian facilities within their respective jurisdictions.
2. identify deficiencies and remedies to correct deficiencies.
3. develop a transition plan or schedule that includes milestones or measures of achievement.
4. develop a system for periodically reviewing and updating the evaluation and transition plan.

**Designation of an ADA Coordinator:** As part of receiving US DOT federal financial assistance, each local agency shall designate an ADA Coordinator, who coordinates the efforts of the administering agency to comply with 49 CFR, Part 27.

**Adoption of Grievance Procedures:** A local agency that employs fifteen (15) or more persons and is receiving US DOT federal financial assistance is required to adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging discrimination on basis of disability.

**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.

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).

**Certification:** Local agencies certify compliance with federal and state laws in the PS&E checklist (see Chapter 12, Section 12.15, and Exhibits 12-D and 12-E, of the LAPM).

## MONITORING

**Local Agency Annual ADA Submittal Form:** Each local agency must provide the Caltrans DLAE a completed “ADA Annual Submittal Form for Local Agencies,” (see Exhibit 9-C in this chapter) by June 1 of each year for the following Federal Fiscal Year (FFY) (October 1 – September 30). This form must be received prior to submitting a “Request for Authorization” to proceed with a federal-aid project.

This form includes:

1. Designated ADA Coordinator information (name, address, phone number, and e-mail address).
2. Certification that the local agency has an updated Self Evaluation and Transition Plan. (If the local agency does not have an updated Self Evaluation and Transition Plan, then the local agency provides an estimated date that they will have one.)
3. Certification of the adoption of a grievance procedure. (If the local agency does not have a grievance procedure, then the local agency provides an estimated date that they will have one.)

**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, Specifications & 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

Please refer to Section 9.3 Accessibility, “Adoption of Grievance Procedures,” in this chapter.

## 9.4 EQUAL EMPLOYMENT OPPORTUNITY (EEO) CONTRACTOR COMPLIANCE

Federal-aid Highway Act of 1968 (23 USC 140(a)) and implementing regulations at 23 CFR 230, require that the local agency receiving 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 Native American 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 sub-applicants and the prohibition of discrimination in employment practices (see Exhibit 4-C “Master Agreement-Example,” Chapter 4, of the LAPM).

**Required Federal Contract Provisions:** Local agencies shall physically insert the Form FHWA 1273 in the contract document. Local agencies are aware that contractor’s 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 (see Chapter 16 Section 16.12 “Equal Employment Opportunity,” 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.

Caltrans Civil Rights 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 ensure a level playing field and foster equal opportunity in federal-aid contracts.

In this manual, federal-aid contracts refer to US DOT assisted-contracts that 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, Co. 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.

In 2006-2007 Caltrans conducted an Availability and Disparity Study that examined the transportation construction and engineering industry in California for discrimination. The study determined that discrimination exists in the transportation contracting industry and that discrimination appears consistently against African Americans, Native Americans, Asian-Pacific Americans, and Women. Hispanic and Subcontinent Asians were found to be at or near parity. Therefore, Caltrans has resumed the Race Conscious DBE Program. All DBE participation is encouraged and is counted towards California's overall annual goal; however, use of contract goals is limited to the following Underutilized Disadvantaged Business Enterprises (UDBEs): African Americans, Native Americans, Asian-Pacific Americans, and Women,

### DBE DEFINITIONS

**Annual Anticipated DBE Participation Level (AADPL)** - The level of participation that the local agency would expect DBEs to achieve in the absence of discrimination and the effects of past discrimination on federal-aid contracts awarded in its jurisdiction in a given FFY. 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 CFR, Part 26. 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 Enterprise (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 (or

lawfully admitted permanent residents) 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 African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found to be socially and economically disadvantaged by the Small Business Administration (see 49 CFR, Part 26).

**Race Conscious Measure or Program** - 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 US 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 regulation, Caltrans has established a statewide overall DBE goal. This is the level of participation that Caltrans would expect DBEs to achieve. In order to ascertain whether the Statewide Overall DBE Goal is achieved, Caltrans will track DBE participation on all federal-aid contracts.

**Underutilized Disadvantaged Business Enterprise (UDBE)** - A firm meeting the definition of a DBE as specified in 49 CFR, Part 26 and is one of the following groups: African Americans, Asian-Pacific Americans, Native Americans, or Women.

## **DBE PROGRAM RESPONSIBILITIES**

### **FHWA RESPONSIBILITIES**

The 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:**

#### **Civil Rights responsibilities include:**

- Administering of the State of California Department of Transportation DBE Program Plan (Caltrans DBE Program Plan).
- Maintaining a directory of certified DBE contractors.

- Assisting the DLAE and the DLA in responding to local agency requests for assistance with questions/issues relative to DBE matters.
- Assisting with training to the district and local agency staff.

**Division of Local Assistance and District Local Assistance Engineer**

**Division of Local Assistance responsibilities include:**

- Providing assistance to DLAE and district staff with questions/issues relative to DBE matters.
- Monitoring local agency compliance with DBE program requirements by conducting process reviews. The FHWA is invited to participate in these process reviews.
- Assembling statewide local agency DBE final utilization information and other information for reports to FHWA.
- Monitoring districts for procedure compliance.
- Assisting with training courses for district and local agency staff.

**District Local Assistance Engineer (DLAE) responsibilities include:**

- Monitoring local agency compliance with DBE program requirements by conducting process reviews. The FHWA is invited to participate in these process reviews.
- Ensuring that local agencies with federal-aid contracts submit the local agency's "California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies" (Exhibit 9-A in this chapter).
- Reviewing and approval of the "Local Agency DBE Annual Submittal Form" (Exhibit 9-B in this chapter) for local agencies that award federal-aid contracts during the FFY.
- Serving as the focal point for advice and assistance to the local agencies on DBE matters.
- Ensuring that the "Local Agency Proposer DBE Information (Consultant Contracts)" form Exhibit 10-O2, and "Local Agency Bidder DBE Information (Construction Contracts)" form Exhibit 15-G2 of the LAPM are reported to the DLA for inclusion in the federal Semi-Annual Uniform Report of DBE Commitments/Awards and Payments.
- Ensuring that the "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" (for consultant and contractors) (Exhibit 17-F, of the LAPM)) is reported to the DLA for inclusion in the federal Semi-Annual Uniform Report of DBE Commitments/Awards and Payments to FHWA.
- Providing DBE oversight of local agencies pursuant to the LAPM.

- Reviewing 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.
- Maintaining a file with an index of all local agency's DBE Implementation Agreements and DBE Annual Submittal Forms. Information from these forms is entered into LP2000.

### LOCAL AGENCY RESPONSIBILITIES

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

- Submitting a "California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies" to the DLAE (Exhibit 9-A in this chapter).
- Developing an AADPL and submitting it to the DLAE for review on the "Local Agency DBE Annual Submittal Form" (Exhibit 9-B in this chapter).
- Designating a DBE Liaison Officer, accountable to the Chief Executive Officer of the local agency, to administer the California Department of Transportation Race Conscious DBE Program as it pertains to local agencies.
- Ensuring prompt and full payment to the prime contractor and subcontractor in compliance with the prompt payment clauses of the contract.
- Ensuring that the "Local Agency Proposer DBE Information (Consultant Contracts)" form Exhibit 10-O2, and "Local Agency Bidder DBE Information (Construction Contracts)" form Exhibit 15-G2, of the LAPM are reported to the DLAE within 15 days of contract execution.
- Ensuring that the "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors" form (LAPM, Exhibit 17-F) is reported by the prime contractor or consultant upon completion of the contract.

## 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 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprise in Department of Transportation Financial Assistance Programs." These provisions apply to all federal-aid transportation projects. Local agency responsibilities are detailed in the Caltrans DBE Program Plan. A copy of this plan is available to download from the DLA web site at: [http://www.dot.ca.gov/hq/LocalPrograms/DBE\\_CRLC/DBE\\_CRLC.html](http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html)

As an initial step, each local agency shall submit a “California Department of Transportation Disadvantaged Business Enterprise (DBE) Program Implementation Agreement for Local Agencies” (Exhibit 9-A) to formally acknowledge the local agency’s commitment to implement the California Department of Transportation Disadvantaged Business Enterprise (DBE) Program, 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 “Local Agency DBE Annual Submittal Form” (Exhibit 9-B). This form provides information for the upcoming FFY, which will include:

- 1) Local agency's AADPL
- 2) Methodology for establishing the AADPL
- 3) Identification of the Disadvantaged Business Enterprise Liaison Officer (DBELO)
- 4) Plan of race neutral measures to implement for the forthcoming FFY
- 5) Prompt pay provision to be used in contracts
- 6) Monitoring and enforcement mechanisms to ensure that DBEs are promptly paid

## **DBE IMPLEMENTATION AGREEMENT FOR LOCAL AGENCIES**

The “California Department of Transportation Disadvantaged Business Enterprise (DBE) Program Implementation Agreement for Local Agencies” (Exhibit 9-A) must be completed and submitted to the DLAE for execution by each agency before a request for authorization is processed. This agreement will need to be signed by a representative who is authorized by the governing body to take such action.

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 the DLAE a completed “Local Agency DBE Annual Submittal Form,” (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.
2. Designated DBE Coordinator information (name, address, phone number, and e-mail address).

3. Detail of planned race neutral measures to be implemented as required by 49 CFR Part 26.51 and as outlined in Section V of the “California Department of Transportation DBE Program Implementation Agreement for Local Agencies” (Exhibit 9-A).
4. The local agency’s choice for method of prompt payment of withheld funds to subcontractors, as well as a brief explanation of the monitoring and enforcement mechanisms the local agency has in place to ensure that DBEs are promptly paid.

### **RACE NEUTRAL AND RACE CONSCIOUS MEANS OF MEETING THE OVERALL STATEWIDE ANNUAL DBE GOAL**

Each local agency assists Caltrans to achieve its Overall Statewide DBE Goal by using race neutral means of facilitating DBE participation based on items of work and availability of DBEs in their respective market areas to the maximum extent feasible. Each local agency establishes contract goals for UDBEs for the portion of the AADPL that the local agency does not project being able to meet using race neutral means.

### **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 “California Department of Transportation DBE Program Implementation Agreement for Local Agencies” (Exhibit 9-A). Annually, the DBELO designation will be reported to Caltrans when the local agency completes its “Local Agency DBE Annual Submittal Form” (Exhibit 9-B).

### **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 ten (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 thirty (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 thirty (30) days after the subcontractor's work is satisfactorily completed.
3. The local agency may hold retainage from the prime contractor and provide for prompt and 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 thirty (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 "Local Agency Annual DBE Submittal Form" (Exhibit 9-B).

#### **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 or 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 to be achieved on contracts to be awarded in its market area in the following FFY.

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 be submitted to the Caltrans DLAE annually by June 1 in advance of the FFY beginning October 1 for federal-aid contracts using “Local Agency DBE Annual Submittal Form” (Exhibit 9-B). 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 anticipates to award on FHWA-assisted contracts in the forthcoming fiscal year. If the local agency is also an FTA sub-recipient 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.

**Specific guidance for calculating the AADPL with the race conscious portion limited to UDBEs can be found in Exhibit 9-D “Calculating the New AADPL” in this chapter.**

### 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:

## 1. 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 North American Industry Classification System (NAICS) codes. (Information about the CBP database may be obtained from the Census Bureau web site at: [www.census.gov/epcd/cbp/view/cbpview.html](http://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. Refer to Exhibit 9-D "AADPL Calculations Including UDBEs" in this chapter for specific guidance for calculating the AADPL.

## 2. 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. **Note:** If your current Bidders List does not break out DBEs by race and gender, you will have to choose another method for calculating your AADPL.

## 3. 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.

## 4. 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.

## 5. 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 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 AND RACE CONSCIOUS COMPONENTS

You must meet the maximum feasible portion of your overall goal by using race neutral means of facilitating DBE participation. Race neutral DBE participation includes any time a DBE or UDBE wins a prime contract through customary competitive procurement procedures is awarded a subcontract on a prime contract that does not carry a UDBE goal or even if there is a UDBE goal, wins a subcontract from a prime contractor that did not consider its UDBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

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

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

2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs and other small businesses obtain bonding and financing).
3. Providing technical assistance and other services.
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors, provision of information in languages other than English, where appropriate).
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.
6. Providing services to help DBEs and other small businesses, improve long-term development, increase opportunities to participate in various types of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
7. Establishing a program to assist new start-up firms, particularly in fields in which DBE participation has historically been low.
8. Ensuring distribution of 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.

A race conscious measure focuses on assisting UDBEs. The use of contract goals is the primary example of a race conscious measure in the DBE program. Local agencies must establish contract goals to meet the portion of their overall goal they do not project being able to meet using race neutral means.

#### **EXPECTED PARTICIPATION**

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

#### **TRANSIT VEHICLE MANUFACTURERS**

If the local agency is also an FTA recipient, 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 contract goals for DBE participation in the procurement of transit vehicles. Transit vehicle manufacturers should contact FTA for applicable procedures.

## 9.8 DBE PARTICIPATION ON THE CONTRACT

### 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 EA
- Final Design
- R/W 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.

## UDBE CONTRACT GOALS

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

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

In some cases, the contract UDBE goal may be zero due to the extremely limited subcontracting opportunities for UDBEs; the lack of certified UDBEs in the geographic area in which work is to be performed; or other reasons. Documentation is required verifying that the local agency has determined that a zero percent UDBE contract goal is appropriate. Documentation may be based on the AADPL methodology with the specific project-related work codes and UDBEs highlighted. Or, if the project has not been included in the AADPL methodology, a separate contract goal methodology must be provided. The DLA/E will review and approve the “zero” goal methodology.

In some cases no contract goal may be warranted (which is different than zero percent goal). If for example, the AADPL has already been met for the FFY or the contract is “sole-source” or “nonprofit.”

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

## ADJUSTING UDBE CONTRACT GOALS

To ensure that local agencies’ AADPLs are narrowly tailored to overcome the effects of discrimination, it may be necessary for an adjustment in the use of UDBE contract goals during the FFY for which the AADPL applies. This adjustment may be needed as a result of more or less subcontracting items with UDBE opportunities for a contract that was not foreseen during the AADPL analysis.

The scope of work on a contract may differ from what was originally thought of during AADPL analysis. Also, a contract change order may have a direct bearing on the UDBE participation opportunities for the contract. Other reasons may warrant the need for adjustments.

UDBE contract goals may also need adjustment induced by how the AADPL is set. These adjustments may be needed for the following reasons:

1. If the local agency estimates, based on meeting previous year's AADPLs that they can meet their entire AADPL for a given year through race neutral means, they may implement their AADPL without setting UDBE contract goals during that year.
2. If during the course of any year in which UDBE contract goals are used, a local agency determines that it will exceed their AADPL, they must reduce or eliminate the use of UDBE contract goals to the extent necessary. UDBE contract goals are not to be set after the AADPL is achieved. If the local agency determines that it will fall short of their AADPL, then it must make appropriate modifications in their use of race neutral and/or race conscious measures to meet the AADPL.
3. If the DBE participation that was obtained by race neutral means alone meets or exceeds a local agency's AADPL for two consecutive years, the local agency is not required to make a projection of the amount of the AADPL that can be met using such means in the next year. The local agency will not set UDBE contract goals on any contracts in the next year. The local agency will continue using only race neutral means to meet their AADPL, unless and until they do not meet their AADPL for a year.
4. If a local agency obtains DBE participation that exceeds their AADPL in two consecutive years through the use of UDBE contract goals (i.e., not through the use of race neutral means alone), the local agency must reduce their use of UDBE contract goals proportionately in the following year.

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

## **DBE CONTRACT REQUIREMENTS**

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

- UDBE contract goals are established in order to achieve fair UDBE participation.
- The project analysis starts with the availability and capacity of certified UDBE contractors (in the project area) to perform the items of work. The contractible items of work are evaluated by the local agency in the light of the project type and size, and normal industry contracting practices.

- All contract bidders or proposers are required to meet the UDBE contract goal, or document that they made an adequate good faith effort to meet the goal if they did not succeed in obtaining the UDBE participation specified in the contract specifications.

#### **LOCAL AGENCY BIDDER OR PROPOSER UDBE COMMITMENT AND DBE INFORMATION FORMS**

A “Local Agency Bidder UDBE Commitment (Construction Contracts)” (LAPM, Exhibit 15-G1) or a “Local Agency Proposer UDBE Commitment (Consultant Contracts)” (Exhibit 10-O1, of the LAPM) must be included in the bid or proposal and provided by each bidder or proposer. The purpose of these forms is to collect data required under 49 CFR 26. The completed form must be submitted to the DLAE at the time of award.

These forms should include the names, addresses and phone numbers of UDBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each UDBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by a UDBE, a description of the exact portion of that work to be performed or furnished by that UDBE should be included in the UDBE information, including the planned location of that work. A bidder or proposer certified as a UDBE should describe the work it has committed to perform with its own forces, as well as any other work that it has committed to be performed by UDBE subcontractors, suppliers, and trucking companies.

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

The “Local Agency Bidder DBE Information (Construction Contracts)” (Exhibit 15-G2) or the “Local Agency Proposer DBE Information (Consultant Contracts)” (Exhibit 10-O2) shall be provided at contract execution—whether or not there is a UDBE goal on the contract. The local agency shall submit this form to the DLAE within 15 days of contract execution for timely reporting. Failure to submit this form timely may result in de-obligation of federal funds for the project. The purpose of these forms is to capture all DBE participation including the UDBE participation, or in instances when there is no UDBE contract goal, DBE participation acquired through normal contracting procedures. DBE participation acquired through normal contracting procedures will be counted towards the race neutral portion of the local agency's AADPL.

#### **FINAL REPORT**

Upon completion of the contract, regardless of whether UDBE and DBE participation is obtained, a summary of the UDBE and DBE records shall be prepared, certified correct, and submitted on the form “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” (Exhibit 17-F) or equivalent by the contractor to the local agency showing total dollars paid to each subcontractor and supplier whether UDBE, DBE or non-DBE. Exhibit 17-F is reviewed by the local agency and certified as complete and accurate.



**Consultant Contracts:** The local agency must send the original plus one copy of the completed “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” (Exhibit 17-F) with the final invoice to the DLAE within thirty (30) days after completion of the contract (see Chapter 10, “Consultant Selection,” of the LAPM).

**Construction Contracts:** The local agency must send the original copy plus one copy of the completed “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” (Exhibit 17-F) to the DLAE as part of its “Report of Expenditure” package before final payment (see Chapter 17, “Project Completion,” of the LAPM).

## COUNTING DBE (INCLUDING UDBE) PARTICIPATION

**Note:** All references to DBEs in this section include UDBEs.

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.

“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 “Project Completion,” of the LAPM 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 (including UDBE) participations are presented in the following sections. **Note:** Only UDBE participation will count toward the contract goal; however, all DBE participations must be documented and counted toward the local agency’s AADPL.

### 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 contract 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, 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 the 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 towards 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 towards 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' decision 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, 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 business that regularly 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 should meet the various requirements prescribed in the CFR, as administered by the California Unified Certification Program (CUCP). 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 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:

- 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.
- 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. 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.
- The socially and economically disadvantaged owners must have an overall understanding of, and managerial, 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; 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 contractor) is certified as an eligible DBE, is a decision that is made by the CUCP. The CUCP 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 Caltrans Civil Rights, Certification Unit web site at: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

### **CERTIFICATION**

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

Department of Transportation  
Civil Rights  
Certification Unit  
1823 14<sup>th</sup> Street, MS-79  
Sacramento, CA 95811  
Phone: (916) 324-6346 or (866) 810-6346

The form may also be downloaded from the internet at:  
[http://www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm)

## 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 CUCP 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 GOOD FAITH EFFORTS

Whether as a bidder or proposer of a U.S. DOT-assisted contract, good faith efforts are required to meet the UDBE contract goal.

When a local agency establishes a UDBE contract goal on a U S DOT-assisted contract a bidder or proposer must, in order to be responsive, make good faith efforts to meet the goal. The bidder or proposer can meet this requirement in either of two ways. First, the bidder or proposer can meet the goal, documenting commitments for participation by UDBE firms sufficient to meet the goal. Second, even if a bidder or proposer does not meet the goal, the bidder or proposer can document adequate good faith efforts. This means that the bidder or proposer must show that they took all necessary and reasonable steps to achieve a UDBE goal. The bidder or proposer could reasonably be expected to obtain sufficient UDBE participation even if they were not fully successful. A local agency shall require a bidder or proposer meet the contract goal in order to be awarded a contract or make good faith efforts.

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

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

### ANTICIPATED ACTIONS

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

- Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified UDBEs who have the capability to perform the work of the contract. The bidder or proposer must solicit this interest within sufficient time to allow the UDBEs to respond to the solicitation. The bidder or proposer must determine with certainty if the UDBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by UDBEs in order to increase the likelihood that the UDBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate UDBE participation, even when the prime contractor or consultant might otherwise prefer to perform these work items with their own forces.
- Providing interested UDBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested UDBEs. It is the bidder's or proposer's responsibility to make a portion of the work available to UDBE subcontractors and suppliers, and to select those portions of the work or material needs consistent with the available UDBE subcontractors and suppliers, so as to facilitate UDBE participation. Evidence of such negotiation includes: names, addresses, telephone numbers of UDBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached for UDBEs to perform the work.

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

- Not rejecting UDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's or consultant's standing within its industry, membership in specific groups, organizations or associations, and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids or proposals in the contractor's or consultant's efforts to meet the project goal.
- Making efforts to assist interested UDBEs in obtaining bonding, lines of credit or insurance as required by the recipient, contractor or proposer.
- Making efforts to assist interested UDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- Effectively using the services of available minority or women community organizations, minority or women contractors' or consulting groups, local, state and federal minority or women business assistance offices, and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of UDBEs.

## ADMINISTRATIVE RECONSIDERATION

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

## SUBSTITUTIONS

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

Local agencies must require a prime contractor or consultant not to terminate for convenience a UDBE subcontractor listed in the Local Agency Bidder UDBE Commitment (Construction Contracts) or a Local Agency Proposer UDBE Commitment (Consultant Contracts) form (or an approved substitute UDBE firm) and have the work performed of the terminated subcontract with its own forces or those of an affiliate without the local agency's prior written consent.



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

## **NONCOMPLIANCE**

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

## **9.10 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 CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS  
ENTERPRISE IMPLEMENTATION AGREEMENT FOR LOCAL AGENCIES**

**CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
DISADVANTAGED BUSINESS ENTERPRISE  
IMPLEMENTATION AGREEMENT  
FOR  
LOCAL AGENCIES**

## CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE 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 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 “Local Agency DBE Annual Submittal Form (Exhibit 9-B)” 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 Overall Statewide Annual DBE Goal (§26.51)**

RECIPIENT must meet the maximum feasible portion of its AADPL by using race neutral means of facilitating DBE participation. Race neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

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

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, 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. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs and other small businesses, improve long-term development, increase opportunities to participate in a variety of types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of your DBE directory through print and electronic means to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

## **VI Race Conscious Means of Meeting the Overall Statewide Annual DBE Goal (§26.51(d))**

RECIPIENT must establish contract goals for Underutilized Disadvantaged Business Enterprises (UDBEs) to meet any portion of your AADPL you do not project being able to meet using race neutral means. UDBEs are limited to these certified DBEs that are owned and controlled by African Americans, Native Americans, Women, and Asian-Pacific Americans.

## **VII 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.

## **VIII 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.

**IX 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).]

**X 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.

**XI Directory (§26.31)**

RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's Web site at : [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep).

**XII 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 Boilerplate Contract Documents on the Internet at [www.dot.ca.gov/hq/LocalPrograms](http://www.dot.ca.gov/hq/LocalPrograms) under "Publications."]

## **B. Prompt Payment**

### **Prompt Progress Payment to Subcontractors**

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

### **Prompt Payment of Withheld Funds to Subcontractors**

The local agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied by including either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

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



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

### **XIII Local Assistance Procedures Manual**

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

### **XIV Transit Vehicle Manufacturers (§ 26.49)**

If FTA-assisted contracts will include transit vehicle procurements, RECIPIENT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements; to certify that it has complied with the requirements of 49 CFR, Part 26, Section 49.

### **XV Bidders List (§26.11(c))**

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 firm.

### **XVI Reporting to the DLAE**

RECIPIENT will promptly submit a copy of Local Agency Proposer UDBE Commitment (Consultant Contracts), (Exhibit 10-O1) or Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1) of the LAPM to the DLAE at the time of award of the consultant or construction contracts.

RECIPIENT will promptly submit a copy of Local Agency Proposer DBE Information (Consultant Contracts) (Exhibit 10-O2) or Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2) or of the LAPM to the DLAE at the time of execution of consultant or construction contract.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors 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.

By \_\_\_\_\_  
(Signature)

Phone Number: \_\_\_\_\_

\_\_\_\_\_  
(Print Name and Title) ADMINISTERING AGENCY  
(Authorized Governing Body Representative)

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

Date: \_\_\_\_\_

\_\_\_\_\_  
[Signature of DLAE]

\_\_\_\_\_  
[Print Name of DLAE]

**Distribution:** (1) Original – DLAE  
(2) Signed copy by the DLAE – Local Agency

(Updated: March 4, 2009)

## 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 (CFR), 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 \_\_\_\_\_ % ( \_\_\_\_\_ % Race Neutral;  
\_\_\_\_\_ % Race Conscious) for the Federal Fiscal Year \_\_\_\_\_ / \_\_\_\_\_, beginning on \_\_\_\_\_  
and ending on September 30.

Methodology

(Please attach the methodology used to determine the AADPL. 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.)

Planned Race Neutral Measures

(Please detail the race neutral measures your local agency plans to implement for the upcoming Federal Fiscal Year per 49 CFR, Part 26.51 and Section V of the California Department of Transportation DBE Program Implementation Agreement for Local Agencies.)

Prompt Pay

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

Prompt Pay Enforcement Mechanism

49 CFR, Part 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause with the local agency's prior written approval. **Please briefly describe the monitoring and enforcement mechanisms in place to ensure that all subcontractors, including DBEs, are promptly paid.**

\_\_\_\_\_  
(Signature )

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Print Name and Title)  
ADMINISTERING AGENCY  
(Authorized Governing Body Representative)

\_\_\_\_\_  
Phone Number

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

\_\_\_\_\_  
Date

**Distribution:** (1) Original - DLAE  
(2) Signed copy by the DLAE – Local Agency

DBE Annual Submittal Form (07/31/09)

## (Attachment)

**Prompt Payment of Withheld Funds to Subcontractors**

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

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

- ☐ **Method 1:** No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- ☐ **Method 2:** No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- ☐ **Method 3:** The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

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## EXHIBIT 9-C LOCAL AGENCY ADA ANNUAL CERTIFICATION FORM

Local Agency ADA Annual Certification Form  
49 CFR, Part 27:  
Nondiscrimination of the Basis of Disability in  
Programs or Activities  
Receiving Federal Financial Assistance.

Program Year: \_\_\_\_\_

Date Certification submitted: \_\_\_\_\_

I. Name of ADA Coordinator: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

II. ADA Complaint Procedure Adopted:

Yes: \_\_\_\_ Date of Adoption: \_\_\_\_\_

No: \_\_\_\_ Planned Date of Adoption: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

III. Self-evaluation completed:

Yes: \_\_\_\_ Date of Completion: \_\_\_\_\_

No: \_\_\_\_ Planned Date of Completion: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

System established for periodically reviewing and updating the evaluation: \_\_\_\_\_

IV. Transition Plan completed:

Yes: \_\_\_\_ Date of Completion: \_\_\_\_\_

Date of Implementation: \_\_\_\_\_

No: \_\_\_\_\_ Planned Date of Completion: \_\_\_\_\_

Final Completion Date: \_\_\_\_\_

V. Grievance Procedure Adopted:

Yes: \_\_\_\_\_ Dated Adopted: \_\_\_\_\_

No: \_\_\_\_\_ Planned Date of Adoption: \_\_\_\_\_

VI. Policies, procedures, and criteria for implementing ADA compliance improvements in maintenance and capitol improvement programs have been reviewed and the required revisions have been made:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

VII. Division of State Architect (DSA) Checklists are used to verify compliance of design packages, standard plans and field inspections to ensure compliance with both State and federal accessibility standards:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

DSA web site: [http://www.dsa.dgs.ca.gov/Access/ud\\_accessmanual.htm](http://www.dsa.dgs.ca.gov/Access/ud_accessmanual.htm)

*Reminder: State of California Government Code Section 4454 requires Division of State Architect (DSA) review and approval of the plans and specifications for local agency pedestrian projects using State funds.*

VIII. Standard Plans are reviewed and updated on an ongoing basis for full ADA and California Accessibility compliance:

Yes: \_\_\_\_\_ No: \_\_\_\_\_



## EXHIBIT 9-D AADPL CALCULATIONS INCLUDING UDBEs

**AADPL Calculations Including UDBEs****Definitions:**

- **DBE** – Disadvantaged Business Enterprise. 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 individual must also control the management and daily business operations. This individual who is a citizen (or lawfully admitted permanent residents) of the United States and who is: (1) an individual whom a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, (2) any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged: African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found to be socially and economically disadvantaged by the U.S. Small Business Administration. (See 49 CFR, Part 26.)
- **UDBE** – Underutilized DBE. DBE classes that have been determined in the 2007 Caltrans Disparity Study to have a statistically significant disparity in their utilization in previously awarded transportation contracts. UDBEs include: African Americans, Native Americans, Asian-Pacific Americans, and Women.
- **Non-UDBE** – The two DBE classes (Hispanic American and Subcontinent Asian American) that have been determined in the 2007 Caltrans Disparity Study to not have a statistically significant disparity in their utilization in previously awarded transportation contracts.
- **AADPL** – Annual Anticipated DBE Participation Level. This is the overall Local Agency goal based on demonstrated evidence of the availability of DBEs relative to all businesses that are ready, willing and able to participate on federally funded contracts.
- **RC AADPL** – Race Conscious portion of AADPL.
- **RN AADPL** – Race Neutral portion of AADPL.
- **Market Area** – Counties in the agency’s geographic area where contractors have historically bid on similar contracts.

**Introduction:**

Agencies shall use Exhibit 9-B from the *Local Assistance Procedures Manual* (LAPM) to report the Annual Anticipated DBE Percentage Level (AADPL) and methodology to Caltrans. The Race Conscious portion of the AADPL is the portion the agency believes it will not be able to meet using Race Neutral means alone. In the absence of information relating to an agency’s ability to meet the Race Neutral portion, the Race Conscious portion should be the same as the entire AADPL, and the Race Neutral portion should be zero. As always, individual contract goals should be adjusted throughout the year as the agency progress in attaining DBE participation is assessed.

There are several ways to calculate an AADPL. A method other than what is shown below may be used, as approved by the District DBE Coordinator. One such alternate method is the use of a current bidders list.

**\*\*Important Note:** While the determination of an AADPL utilizes the same calculation as before (during the Race Neutral mode), the Race Conscious/Race Neutral breakdown should always include consideration of not only the availability of UDBEs (Race Conscious), but also the specific non-UDBEs and the likelihood that they will be used on these contracts. If the likelihood is high that these non-UDBEs would not be used on the contracts, they should be removed from consideration. This would result in a higher RC AADPL and a lower RN AADPL. Periodically throughout the contracting year, these methods and assumptions should be revisited to more accurately tailor future contract goals.

### AADPL Calculation:

First, determine the projects that the agency anticipates awarding in the upcoming Federal Fiscal Year (FFY). List these projects, including both construction and consultant contracts. Next, determine the various work types and amounts of work that will be involved, using the work categories and codes that can be found on the California Unified Certification Program (CUCP) Web site, as explained below. For each Work Category, calculate the percentage (Weight) of the total contract work to be performed.

To determine the number of DBE firms (for the *numerator* in the calculation):

1. For each NAICS Work Category, determine total number of DBEs in the agency's Market Area that can perform that type of work. To do this, use the CUCP web site, which can be accessed by going to: [http://www.dot.ca.gov/hq/bep/dbe\\_query.htm](http://www.dot.ca.gov/hq/bep/dbe_query.htm) and click on the "Click here to Access the DBE Query Form" link.
2. On the resulting page, go to the "County" box and highlight all the counties in the agency's Market Area. The control key can be used to highlight more than one county at a time.
3. Click on the appropriate 2-digit code in the "NAICS Categories" box. This will automatically bring up the more detailed 6-digit NAICS Work Category codes in a new box. Highlight the appropriate 6-digit code. Scroll down to "License Type" and highlight the appropriate license (e.g., Electrical Contractor). Finally, click the "Start Search" button at the bottom of the page. This will give the number of DBE firms available to do work in that NAICS Work Category, followed by a list of individual firms.
4. To narrow it down to the agency's Market Area, print out the list and cross off any firms that are not located within the Market Area counties. This will result in a list of DBE firms that are in the agency's Market Area. The number of firms remaining on the list becomes the numerator for that Work Category.
5. Repeat this process for each Work Category.

To determine the total number of firms (for the *denominator* in the calculation):

1. For each NAICS Work Category, determine the total number of firms in the agency's Market Area that are willing to perform that type of work. To do this, go to the following web site:  
<http://censtats.census.gov/cbpnaic/cbpnaic.shtml>
2. At the top of the page, select "California" and click on the "Go" button.
3. On the next page, use the drop-down menu to select one of the counties in the agency's Market Area, and click the "Select" button. The "Industry Codes" listed are the same as the NAICS codes. For each 2-digit category that is being used, click on the "Detail" button. This will bring up a list of all of the 6-digit Work Category codes contained within that category.
4. For each 6-digit Work Category to be used, click the "Detail" button to get a county-by-county list of the total number of establishments. Add the numbers for each county in the Market Area to get the total number of firms for this type of work, which becomes the denominator for that Work Category.
5. Repeat this process for each Work Category.

After completing the above tasks, make a table showing the following information for each NAICS Work Category:

- A. Number of DBE Firms (numerator)
- B. Number of Total Firms (denominator)
- C. Percentage of total contract funding in the NAICS Work Category (Weight).

Use this information as shown in the example that follows.

### **AADPL Calculation Example:**

An agency has \$200,000 in Total Project Funding (both federal and local/state \$), broken down into the following Work Categories:

Contract #1 – <u>Main Street Re-paving</u> : (\$100,000 contract)		
(NAICS Code) 237310 - Highway and Street Construction	= \$80,000	= 40% Funding
238210 - Electrical Work	= \$20,000	= 10% Funding
Contract #2 – <u>4<sup>th</sup> Street Design</u> : (\$100,000 contract)		
541330 - Civil Engineering Services	= \$100,000	= 50% Funding

In order to determine the AADPL base figure, first compute the AADPL formula for each Work Category:

$$\text{AADPL (per Work Category)} = \left[ \sum \frac{\text{No. of DBEs in a Work Category}}{\text{No. of All Firms in same Work Category}} \times \text{Weight} \right] \times 100$$

Each Work Category AADPL is then multiplied by its percentage (Weight) of the total work to be performed. The resulting numbers are then added up to obtain the overall AADPL Base Figure:

AADPL (Base Figure) =

$$\left[ \frac{\text{\# of DBEs in 237310}}{\text{\# of all firms in 237310}} \times 0.4 + \frac{\text{\# of DBEs in 238210}}{\text{\# of all firms in 238210}} \times 0.1 + \frac{\text{\# of DBEs in 541330}}{\text{\# of all firms in 541330}} \times 0.5 \right] \times 100$$

### Race Conscious Portion of AADPL (Using UDBEs):

To obtain the **RC AADPL**, use the same method shown above, except substitute UDBEs for DBEs in the formula.

To get the number of UDBE firms (UDBE firms = male-owned UDBE firms + all female-owned firms), eliminate all firms on the DBE lists from the CUCP database that are not designated as either female-owned or male-owned with the UDBE-designated ethnicities (see definitions above).

As before, make a table showing the number of UDBE firms, number of total firms, and Work Category Weights. Insert these as appropriate in the formula below:

$$\text{RC AADPL} = \left[ \sum \frac{\text{No. of UDBEs in a Work Category}}{\text{No. of All Firms in same Work Category}} \times \text{Weight} \right] \times 100$$

### Race Neutral Portion of AADPL:

The Race Neutral portion of the AADPL is the overall AADPL minus the Race Conscious portion.

$$\text{RN AADPL} = \text{AADPL} - \text{RC AADPL}$$

### Entering Information onto Exhibit 9-B:

After adjusting the AADPL and RC/RN breakdowns determined above for other factors as needed (see **\*\*Important Note**), enter the adjusted AADPL figure, as well as the adjusted Race Conscious and Race Neutral AADPLs, onto Exhibit 9-B.

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## CHAPTER 10 CONSULTANT SELECTION

### 10.1 GENERAL

#### INTRODUCTION

A local agency may engage consultants to perform architectural, engineering, and related services needed to develop a federal-aid and/or state funded project. Local agencies requesting federal and/or state funds to reimburse Architectural and Engineering (A&E) Consultants must follow the selection and contracting procedures detailed in this chapter.

#### FEDERAL LEGISLATION

The provisions of the Brooks Act (40 USC 544) require local agencies to award federally funded engineering and design contracts on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 CFR, Section 172).

The following are two of the Required Contract Provisions including exhibits:

##### **Disadvantaged Business Enterprise**

- Notice to Proposers Disadvantaged Business Enterprise Information (Exhibit 10-I, in this chapter)
- Standard Agreement for Subcontractor/DBE Participation (Exhibit 10-J, in this chapter)
- Local Agency Proposer UDBE Commitment (Consultant Contracts) (Exhibit 10-O1, in this chapter)
- Local Agency Proposer DBE Information (Consultant Contract) (Exhibit 10-O2, in this chapter)
- Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors (Exhibit 17-F, of the *Local Assistance Procedures Manual* [LAPM])

##### **Federal Lobbying Restrictions, Title 31 U.S.C. Section 1352**

- Nonlobbying Certification for Federal-aid Contracts (Exhibit 10-P, LAPM)
- Disclosure of Lobbying Activities, Standard Form – LLL and Instructions (Exhibit 10-Q, LAPM)

#### STATE LEGISLATION

**Architectural and Engineering (A&E) Consultants** - Those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services are termed “Architectural and Engineering (A&E) Consultants.” California law requires selection of A&E contract services on the basis of demonstrated competence and professional qualifications. Cost may not be included as criteria for rating such consultants. Negotiations shall begin with the most qualified consultant. Should negotiations result in not a price the local agency considers to be fair and reasonable, negotiations shall be formally terminated and the local agency shall then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm is not successful, negotiations shall be formally terminated and the local agency shall then undertake negotiations with the third most qualified consultant, etc. until the price is determined to be fair and reasonable by the local agency (*California Government Code*, Chapter 10, Sections 4525 through 4529.5).

Consultants, other than A&E consultants, may be selected using cost as one of, or the sole selection criteria. The procedures outlined in this chapter could be modified for selecting non-A&E consultants, by adding a cost item to the proposal. Similarly in selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a draft contract would be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages. Section 1720 of the *State Labor Code* which states in part:

“For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.”

Wage guidelines entitled, *Consultant Guidelines for Prevailing Wage and Labor Compliance on Architectural and Engineering (A&E) Contracts* is used to administer Caltrans Consultant contracts and is available at:

[http://www.dot.ca.gov/hq/construc/A&E\\_Guidelines/A&EGuidelines.pdf](http://www.dot.ca.gov/hq/construc/A&E_Guidelines/A&EGuidelines.pdf)

Wage information is available through the Caltrans Division of Local Assistance web site at: [http://www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html)

## SELECTING THE PROJECT

The local agency is responsible for selecting and initiating a federal-aid and/or state financed highway project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The local agency must identify the project’s objectives including the general level of improvement or service, operating standards, and the target date for project completion before commencing any consultant selection process.

## SUBCONTRACTED SERVICES

The consultant is responsible for performing the work required under the agreement in a manner acceptable to the local agency. The consultant’s organization and all associated consultants and subcontractors must be identified at the time of the proposal.

If the consultant wishes to use a firm not specified in the proposal, prior written approval must be obtained from the local agency. If a subcontract for work, or services to be performed by such firms exceeds \$25,000, the subcontract shall contain all required provisions of the prime contract.

## PRE-AWARD AUDIT

A pre-award audit is required for consultant contracts with state or federal-aid highway funds in the contract as outlined below.

**Case 1: Contracts less than \$250,000**

For consultant contracts which total less than \$250,000, a pre-award audit is not required unless the consultant has been previously identified as a “high-risk” as described in 49 CFR, Part 18 Section 12.

49 CFR, Part 18 Section 12 states that a grantee or subgrantee may be considered “high-risk,” if an awarding agency determines that a grantee or subgrantee:

- Has a history of unsatisfactory performance, or
- Is not financially stable, or
- Has a management system which does not meet the management standards set forth in this part, or
- Has not conformed to terms and conditions of previous awards, or
- Is otherwise, not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high-risk condition and shall be included in the award.

For further clarification of the term “high-risk” contact Caltrans Audits and Investigations.

**Case 2: Contracts in excess of \$250, 000**

Consultant contracts in excess of \$250,000 require a pre-award audit. The pre-award audit examines the consultant’s accounting, estimating, administrative systems, proposed costs, financial condition, and the proposed contract language. The audit is as broad in scope as necessary to meet the objectives found in Exhibit 10-M “Standard Audit Program Procedures” in this chapter.

A pre-award audit is also required under the following situations:

- Accumulative amendments that increase the total amount of the contract by over \$250,000 regardless of the number of amendments.
- Any single amendment over \$250,000.
- Any subcontract over \$250,000.

Procedures to perform the pre-award audit will depend on who the local agency selects to perform the audit. The local agency may perform the pre-award audit with their own personnel; employ a Certified Public Accountant (CPA) to perform the pre-award audit; or request Caltrans to perform the pre-award audit.

**CALTRANS PERFORMS PRE-AWARD AUDIT**

For situations where a local agency selects Caltrans to perform the audit, the local agency must transmit a *Pre-award Audit Request Letter and Checklist* (see Exhibit 10-A in this chapter) to Caltrans Audits and Investigations with copies of the proposed consultant contract and cost proposal (also a copy to the DLAE). The consultant’s cost proposal for the prime and all proposed subcontractors must contain a breakdown of all components of cost to include: labor base, rate, other direct costs, overhead, and fee. For “Sample Cost Proposals,” see Exhibit 10-H in this chapter. The agency must advise the consultant that an audit needs to be performed and that cooperation with the auditors is expected.

Thirty working calendar days from the date of receipt of a complete and acceptable package (which includes the request, draft contract, and a cost proposal for the consultant and subcontractors, each with a cost breakdown) should be allowed as a guideline. After receipt of the pre-award audit report from Caltrans Audits and Investigations, with the resolution of outstanding issues by the local agency, the “Audit Disposition” (Exhibit 10-K in this chapter) shall be completed by the local agency and sent to Caltrans Audits and Investigations with a copy to the DLAE. Section 4.3 of the *Caltrans Service Contracts Manual* provides additional details about the audit process and is available at: <http://admin.dot.ca.gov/pc/pdfshell.shtml>

#### LOCAL AGENCY/ HIRED CERTIFIED PUBLIC ACCOUNTANT PERFORMS PRE-AWARD AUDIT

The local agency shall notify Caltrans Audits and Investigations of their decision to perform the pre-award audit using its own forces, or by contracting with a Certified Public Accounting firm. The notification will be in writing, using the sample “Pre-award Audit Notification Letter” (Exhibit 10-L in this chapter). As a part of this notification process, the local agency shall also submit pre-award audit procedures.

Caltrans Audits and Investigations may perform a review of such procedures and express an opinion on them as needed. Caltrans shall retain the right to audit, or review the work of the local agency or designee at any time.

The audit must be completed before the consultant contract is executed. Failure to do this will result in loss of funds for the consultant services. **The audit must be performed in accordance with generally accepted government auditing standards required by the United States General Accounting Office at: [www.gao.gov/govaud/ybk01.htm](http://www.gao.gov/govaud/ybk01.htm).**

The local agency shall follow the information in the “Accounting and Auditing Guidelines for Contracts with Caltrans” (Exhibit 10-N in this chapter) to assure that the audit objectives are clear as to the basic elements of an accounting system. In addition, *Standard Audit Program Procedures* shall be used as the minimum procedures to be performed for the pre-award audit.

Negotiation may begin with the consultant while the audit is being performed. The contract shall not be executed until the audit report has been completed and the following are found to be satisfactory by the auditor: consultant’s accounting system, rates charged, knowledge of FHWA’s cost eligibility, and documentation requirements. The local agency shall be proactive to resolve any audit comments before execution of the consultant contract.

The “Request for Authorization to Proceed with Preliminary Engineering” (Exhibit 3-A, of the LAPM) includes boxes that indicate compliance with the pre-award audit requirement when there is federal-aid and or state participation.

The “Audit Disposition” (Exhibit 10-K in this chapter) must be signed by the local agency financial officer and submitted to the DLAE at completion of the pre-award audit. A courtesy copy of pre-award audits conducted by the local agency shall be mailed to:

Department of Transportation  
Caltrans Office Audits and Investigations  
P.O. Box 942874  
Sacramento, CA 94272-0001

The local agency is responsible for complying with these pre-award audit procedures and determining the eligibility of costs reimbursed to the consultant. The local agency will be subject to the sanctions mentioned in Chapter 20, “Deficiencies and Sanctions,” of the LAPM if Caltrans, FHWA, or Federal Transportation Agency (FTA) determines that any reimbursements to the consultant are the results of lack of proper contract provisions, unallowable charges to unsupported activities, or an inadequate accounting system.

### **AUTHORIZATION TO PROCEED**

FHWA or Caltrans acting in their behalf must give the local agency an “Authorization to Proceed” with the work prior to the performance of any work for which federal reimbursement is to be requested, including the pre-award audit (see Chapter 3, “Project Authorization,” of the LAPM). For state funded projects, see Chapter 23, “Local Agency State Transportation Improvement Program Projects,” of the *Local Assistance Program Guidelines* (LAPG) for guidance as to when work may proceed.

Copies of the “Authorization to Proceed” and the consultant contract must be retained in the project files for future audit purposes.

## **10.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS**

The need for a consultant is identified by comparing the project’s schedule and objectives with the local agency’s capabilities, its staff availability of the required expertise, and its funding resources. If the local agency does not have sufficient staff capabilities, it may choose to solicit assistance from another agency, or use a qualified private consultant to perform the required work.

If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the DLAE should be notified if federal-aid or state funds are to be requested for the project segment to be contracted out.

### **APPOINTING THE CONTRACT ADMINISTRATOR**

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions and in the administration of the consultant’s work. The Contract Administrator must be a qualified local agency employee, or have staff that is qualified to ensure the consultant’s work is complete, accurate, and consistent with the terms and conditions of the consultant contract. The Contract Administrator or staff members must be thoroughly familiar with the work to be contracted out and the standards to be used.

The Contract Administrator’s duties include the following:

- Provides direction to ensure the proposed work is advertised properly.
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used.
- Prepares the draft contract.
- Arranges for preparation in advance of an independent estimate of the value of the work to be contracted out.
- Ensures that the selection procedures are followed.

- Analyzes the selected/best-qualified consultant's cost proposal.
- Serves as the local agency's primary contact person for the successful consultant.
- Monitors the consultant's progress and providing direction.
- Reviews billings and makes a determination whether costs billed are reasonable in relation to the work performed during billing period.
- Approves the consultant's progress payments.
- Identifies other local agency persons for the consultant to contact, if needed.

The use of a consultant for a "management" role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management roles must be selected; using the same procedures as those for other consultants specified in this chapter.

### **DETERMINING THE PROJECT SCHEDULE**

The local agency develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

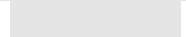
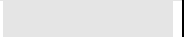
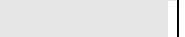
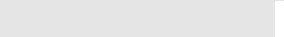
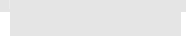
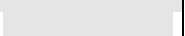
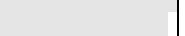

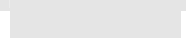
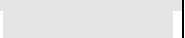



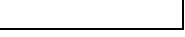
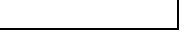
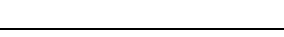
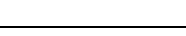
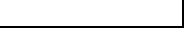
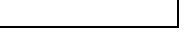
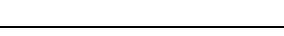
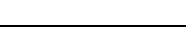
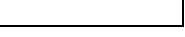
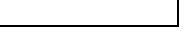
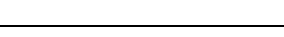
- Selecting the consultant.
- Developing the consultant contract.
- Completing the pre-award audit.
- Conducting meetings and project reviews.

### **SEGMENTING CONSULTANT WORK**

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see Chapter 6, "Environmental Procedures," of the LAPM and Chapters 31 and 32 of the *Standard Environmental Reference* [SER]). Final detailed design must be delayed until environmental clearance has been received if federal reimbursement is desired.

Refer to Figure 10-1 "Segmenting Consultant Work" in this chapter, which illustrates several satisfactory ways to segment consultant activities.

Figure 10-1 Segmenting Consultant Work

	Well-structured Projects With Simple Right of Way Requirements	Well-structured Projects With Complex Right of Way Requirements	More Difficult Projects	Very Complex Projects
Preliminary Engineering				
Environmental Analysis				
Plans, Specifications & Estimates				
Right of Way Activities				
Utility Relocation				
Construction Engineering				

## VALUE ENGINEERING ANALYSIS

For projects on the federal-aid system with a total project cost of \$25 million or more and a bridge project with a total project cost of \$20 million or more, federal requirements included in “SAFETEA-LU” Section 1904 “Stewardship and Oversight” mandate that a “value engineering analysis” be performed on these projects. For more information on this subject, please see Chapter 12 “Plans, Specifications & Estimate,” Section 12.5 “Value Engineering Analysis” of this manual.

For bridge projects, the multi-discipline team shall also include bridge substructure requirements based on construction material and be evaluated as follows:

- On engineering and economic bases taking into consideration acceptable designs for bridges.
- Using analysis of life-cycle and duration of project construction.

## SPECIFY PRODUCTS TO BE DELIVERED

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

## SCOPE OF CONSULTANT WORK

The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the deliverables and deadlines.

## DBE PARTICIPATION

The provisions of 49 CFR, Part 26 require that a local agency receiving federal-aid funds complies with the DBE program, and that DBE firms have the opportunity to participate in the projects (see Chapter 9, “Civil Rights and Disadvantaged Business Enterprises,” of the LAPM). Such steps include considering of DBE firms by the proposing consultants. When feasible, organize the project schedule and task requirements to encourage participation in the contract by DBE firms. Local agencies should be fully aware of all of the subcontracting opportunities in their consultant contracts. Below are some examples of subcontracting opportunities for various types of contracts:

- For the design of a bridge (surveys, geotechnical, hydraulics, hydrology, seismic studies, cost estimating, traffic control, as-builts, etc.).
- For the seismic retrofit of an existing bridge (surveys, geotechnical, forensic studies, seismic studies, cost estimating, as-builts, etc.).
- For the design of roadways (surveys, hydrology, geotechnical, cost estimating, traffic control, as-builts, etc.).

The consultant shall ensure that certified DBE firms have the opportunity to participate in the performance of the contract and shall take all necessary and reasonable steps for such assurance.



If there is an Underutilized DBE (UDBE) goal on the contract, the consultant must meet the goal, or document a good faith effort to meet the contract goal by using UDBEs. Good faith efforts shall be documented and verified (Chapter 15, Exhibit 15-H “UDBE Information-Good Faith Efforts,” form of the LAPM). If a UDBE subconsultant is unable to perform and the goal is not otherwise met, the consultant must make a good faith effort to replace him/her with another UDBE subconsultant to the extent needed to meet the UDBE goal. For more detailed information see Exhibit 10-I, “Notice to Proposers Disadvantaged Business Enterprises Information.” For sample contract clauses with and without specified UDBE goals see Exhibit 10-J, “Standard Agreement for Subcontractor/DBE Participation.”

## REPORTING DBE PARTICIPATION

DBE language must be included in the RFQ or RFP, if the proposed contract will include federal-aid funds. The “Notice to Proposers Disadvantaged Business Enterprise Information” (Exhibit 10-I, of the LAPM) is to be included in all consultant contracts with federal-aid funds. In addition, certain DBE contract clauses must be included in the consultant contract.

## REPORTING UDBE COMMITMENTS AND DBE INFORMATION

### For contracts with UDBE goals:

The “Local Agency Proposer UDBE Commitment (Consultant Contracts) (Exhibit 10-O1) must be included in the proposal package and provided by each proposer. The completed form must be submitted to the DLAE at the time of award.

This form must include the names, addresses, and phone numbers of UDBE firms that will participate with a complete description of work or supplies to be provided by each, and the dollar value of each UDBE transaction. When 100 percent of a contract item of work is not to be performed or furnished by the UDBE, a description of the exact portion of work to be performed or furnished by that UDBE should be included in the UDBE commitment, including the planned location of that work. A proposer certified as a DBE and is owned by an African American, Asian-Pacific America, Native American, or a Woman should describe the work it has committed to be performed with its own forces, as well as any other work that it has committed to be performed by UDBE subcontractors, suppliers, and trucking companies.

The proposer shall provide written confirmation from each UDBE participating in the contract. A copy of a UDBE’s quote will serve as written confirmation that the UDBE is participating in the contract. If a UDBE is participating as a joint venture partner, the proposer shall submit a copy of the joint venture agreement.

The “Local Agency Proposer DBE Information (Consultant Contracts)” (Exhibit 10-O2) shall also be included in the proposal package and provided by each proposer. The purpose of this form is to capture DBE participation in accordance with 49 CFR, Part 26. On contracts with a UDBE goal, this form captures certified DBEs that are owned by Hispanic American and Subcontinent Asian American males (include persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka). This DBE participation will be counted towards the race neutral portion of the local agency’s AADPL.

For contracts with no UDBE contract goal, Exhibit 10-O2 shall be included in the proposal package and provided by each proposer. The purpose of including this form is to capture all DBE participation, including UDBE participation that was acquired through normal contracting procedures (i.e., no goal was placed on the contract).

**Reporting DBE (including UDBE) Final Utilization (Contracts with or without goals)**

Upon completion of the contract, regardless of whether UDBE or other DBE participation is obtained, a summary of the UDBE and DBE final utilization shall be prepared, certified correct, and submitted on the form “Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors” (Exhibit 17-F, of the LAPM) or equivalent by the contractor to the local agency showing total dollars paid to each subcontractor and supplier whether UDBE, DBE, or non-DBE. Exhibit 17-F is reviewed by the local agency and certified as complete and accurate.

The local agency must send the original, plus one copy of the completed Exhibit 17-F with the final invoice to the DLAE within thirty (30) days after completion of the contract.

**ESTIMATED COST OF CONSULTANT WORK**

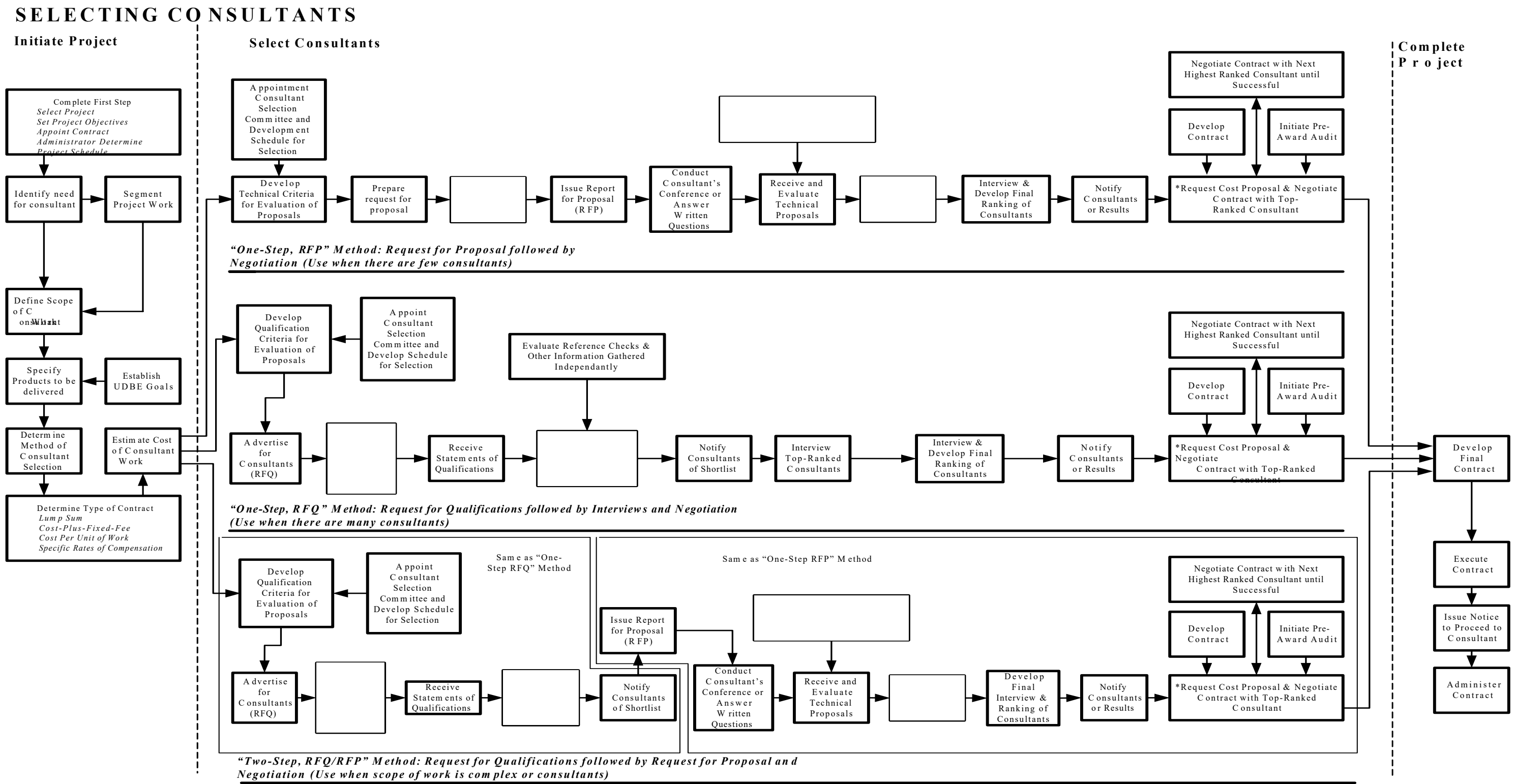
An independent cost estimate is needed for consultant contracts (required for contracts over \$100,000) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance, so the local agency’s negotiating team has a detailed cost analysis of the project to evaluate the reasonableness of the consultant’s cost proposal. The estimate, which is specifically for the use of the local agency’s negotiating team, is to be kept confidential.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services (i.e., preliminary design, environmental, final design) must be clearly identified in the solicitation of consultant services (i.e., RFQ, RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible.

The cost estimate must include a breakdown of:

- Direct labor costs
- Indirect costs
- General and administrative costs
- Other direct costs such as equipment and materials
- Subcontractor costs
- Net fee or profit



Flowchart 10-1 Selecting Consultants

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**PREPARE REQUEST FOR PROPOSAL (RFP)**

The information required in a RFP includes the following:

- Description of project
- Scope of work
- Schedule of work
- Proposal format
- Method and criteria for selection
- Whether or not a UDBE contract goal is specified, if a federal-aid contract

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. A minimum of four weeks is usually allowed between the time the RFP is mailed and time that proposals must be submitted. More time may be required for complex contracts or projects.

Items typically required in a technical proposal include:

- Work plan (specify what is to be covered)
- Organization chart
- Schedule and deadlines
- Staffing plan
- Staff resumes
- Names of consultant's project manager and the individual authorized to negotiate the contract on behalf of the consulting firm
- References

**ADVERTISE FOR CONSULTANTS**

The local agency advertises the availability of the RFP in a major newspaper of general circulation or technical publication of widespread circulation. The local agency shall send the RFPs to organizations qualified to do the specified work, as well as professional societies, and recognized DBE organizations (if federal-aid funds are being used). In some cases, it may be desirable to advertise nationwide for a particular project or service.

**ISSUE REQUEST FOR PROPOSAL**

The local agency shall issue the RFP to all consultants responding to the advertisement.

**CONDUCT PROPOSER'S CONFERENCE OR ANSWER WRITTEN QUESTIONS**

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer's conference, or by doing both. The local agency must mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer's conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer's conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

## RECEIVE AND EVALUATE TECHNICAL PROPOSALS

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

The members of the consultant selection committee must evaluate each proposal in terms of the technical criteria listed in the RFP. The committee must also evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information that is gathered before the interviews are conducted. If necessary, the results of the reference checks and/or other information may be discussed with the highest ranked qualified consultants at the interviews.

## DEVELOP FINAL RANKING AND NOTIFY CONSULTANTS OF RESULTS

The selection committee discusses and documents the strengths and weaknesses of each proposal; interviews the three or more highest ranked consultants; and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected should be objective reasons. The consultant should not be compared to others, and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing, however, any member of the selection committee may be designated to do the debriefing.

Since the technical proposal normally contains information about the method(s) a consultant will use for the work and potential problems and solutions for a specific project or segment; this method of consultant selection should not be used to establish a list of qualified consultants (pre-qualified list).

## NEGOTIATE CONTRACT WITH TOP-RANKED CONSULTANT

The top-ranked consultant is requested to submit a cost proposal. Alternatively, if time is of the essence and it can be justified; cost proposals may be requested from all of the consultants on the shortlist. After review of the cost proposal, the local agency begins the negotiations with the most qualified consultant. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency.

The independent cost estimatedeveloped in advance by the local agency is an important basis and tool for negotiations and/or terminating unsuccessful negotiations with the most qualified consultant. It can be revised, if needed, for use in negotiations with the next most qualified consultant.

## CLOSEOUT PROJECTS

Local agencies are encouraged to close out consultant contracts quickly. If the contract was for preparation of PS&E, environmental, preliminary material testing and/or material reports, or preliminary surveys, such closeouts should be delayed within the requirements of the “Timely Use of Fund” policy until after physical construction of the project is completed, and all construction claims are settled. Delaying the closeout until project completion ensures the consultant’s availability, if problems arise, or if the need for a change occurs relative to the consultant’s work.

After making final payment of consultant invoices, the local agency is to follow the requirements in this chapter and in Chapter 5, “Accounting/Invoices,” of the LAPM to request final reimbursement.

## PERFORMANCE EVALUATION

The Contract Administrator evaluates the consultant’s performance after the consultant’s final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant’s project manager. See Exhibit 10-S, “Consultant Performance Evaluation” form of a suggested format for use by the local agency.

## PROJECT RECORDS

For audit purposes, project records and documentation shall be kept for three (3) years after payment of the final federal and/or state voucher. Among the records to be retained as follows:

- Copies of RFPs and RFQs
- Documentation of DBE participation
- Solicitation/advertisement records
- Identification of selection committee members
- Evaluation and ranking records
- Independent cost estimate
- Record of negotiations
- Pre-award audit when applicable
- Executed consultant contracts and amendments
- Construction oversight/progress meetings
- Progress and final payments
- Performance evaluation
- Consultant contract checklists
- Accounting records documenting compliance with state and federal administrative requirements

# 10.8 MISCELLANEOUS CONSIDERATIONS

## RETAINING A CONSULTANT AS AN AGENCY ENGINEER

A local agency may retain qualified consultants on its staff in professional capacities such as agency consultant engineers or architects. The agency consultants can be an individual or a firm providing professional and/or management services.

Eligibility for federal and/or state reimbursement for these services requires the following:

- Compliance with the selection procedures specified in this chapter.
- Existence of a contract between the local agency and the consultant specifying the services to be performed.
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer.
- Selection on an open and competitive basis within the last three (3) years.

If engineering services for a project are within the scope of the services described in the retained consultant's agreement, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal and/or state reimbursement for these services require a new consultant agreement to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the Request for Proposal (RFP), or Request for Qualifications (RFQ) shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants are procured with the federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

- Subparagraphs of 49 CFR §18.36(b)(2) "...maintain a contract administration system..."; and (3) "...maintain a written code of standards.... No employee, officer or agent of the ...subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved...."
- Subparagraph of 23 CFR §172.9(d) "Consultant in management roles," which requires that if a local agency has or intends to have a consultant in a management role, the local agency shall receive approval from Caltrans. In addition, any federal-aid projects designated as High Profile Projects, approval may also be needed from FHWA.
- Liability insurance should normally be required from the consultant (errors and omissions, etc.)

## CONSTRUCTION ENGINEERING SERVICES

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is responsible in-charge. These activities may include construction surveys, foundation investigations, measurement and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant's agreement defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant's construction engineering staff.



**Exhibit 10-A Example Pre-Award Audit Request Letter and Checklist***Local Agency Letterhead*

Department of Transportation  
Audits and Investigations, MS 2  
Attention: External Audit Manager  
P.O. Box 942874  
Sacramento, CA 94274-0001

Date: \_\_\_\_\_  
(Federal Number)  
(Project Description)  
\_\_\_\_\_

Dear External Audit Manager:

Attached is a copy of the following information for proposed contract number \_\_\_\_\_ with  
(Consultant's Name, Address, Contact Name, Phone Number).

- \_\_\_\_ Proposed contract between the local agency and the consultant
- \_\_\_\_ Proposed cost proposal for prime consultant and all subcontractors
- \_\_\_\_ Name of local agency contact person, phone number, and fax number
- \_\_\_\_ Local Agency Proposer UDBE Commitment (Consultant Contracts) Exhibit 10-O1 & Local Agency Proposer DBE Information (Consultant Contracts) Exhibit 10-O2

The subcontractors proposed for this contract are as follows: (List all Subcontractors Name, Address, Phone Number).

Please arrange a pre-award evaluation and forward a copy of the written report to us. Services to be performed under this contract are (describe work to be performed).

The (Local Agency Name) understands that any work with costs incurred prior to the approval of the "Authorization to Proceed (E-76)" is not eligible for federal fund reimbursement.

Please notify us of the estimated completion date of the audit.

If you need further information, please contact (Name) at (Phone #).

Sincerely,

Signed \_\_\_\_\_  
Title \_\_\_\_\_  
Agency \_\_\_\_\_

**Attachments:** Proposed Contract  
Draft Cost Proposal(s)  
cc: DLAE

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## Exhibit 10-C Consultant Agreement Reviewers Checklist

## CONSULTANT AGREEMENT REVIEWERS CHECKLIST

Date: \_\_\_\_\_

Agency Name: \_\_\_\_\_

Federal or State \_\_\_\_\_

Project Number: \_\_\_\_\_

Project Location: \_\_\_\_\_

Project File Location

## Tab/Page No.

## I. SELECTION PROCEDURES ITEMS NEEDED FOR REVIEW

- |   |                              |                             |       |
|---|------------------------------|-----------------------------|-------|
| A. DESCRIPTION OF NEED FOR CONSULTANT                       | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| B. RECORDS OF PUBLICATION OF RFP OR RFQ                     | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| C. SOLICITATION RECORDS                                     | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| D. INDEPENDENT COST ESTIMATES (FOR CONTRACT OVER \$100,000) | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| E. EVALUATION CRITERIA                                      | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| F. DOCUMENTATION OF SELECTION                               | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| G. PLAN TO MONITOR WORK                                     | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |

## II. CONSULTANT AGREEMENT

## A. INTRODUCTION

1. Date of execution of agreement \_\_\_\_\_
2. Names, address identifying data of agreeing parties \_\_\_\_\_  
☐ YES ☐ NO \_\_\_\_\_
3. Location and description of project \_\_\_\_\_  
☐ YES ☐ NO \_\_\_\_\_
4. Name of Local Agency Contract Administrator \_\_\_\_\_  
☐ YES ☐ NO \_\_\_\_\_
5. Name of Consultant Project Manager \_\_\_\_\_  
☐ YES ☐ NO \_\_\_\_\_

## B. AGREEMENT

1. Type of work to be done
  - a) Detailed Scope of Work ☐ YES ☐ NO \_\_\_\_\_
  - b) Consultant services ☐ YES ☐ NO \_\_\_\_\_
  - c) Right of Way ☐ YES ☐ NO \_\_\_\_\_

- |  |                              |                             |       |
|--|------------------------------|-----------------------------|-------|
| d) Subsurface investigations   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| e) Obligations of local agency to consultant   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| f) Conferences, visits to site, inspection of work   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| g) Checking of shop drawings   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| h) Consultant services during construction   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| i) Deliverables and number of copies   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| j) Milestones and description of work for each   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| 2. Date of beginning of contract   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| 3. Payment methods   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| 4. Record retention (three years) and right to audit   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| 5. Contract Cost Principles and Procedures and Administrative Requirements (CFR 48, <i>Federal Acquisition Regulation System</i> , Chapter 1, Part 31 and CFR 49, Part 18) | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| a) Covenants Against Contingent Fees<br>Exhibit 10-D, (B6 [a])   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| b) Design Standards - Exhibit 10-D, (B6 [b])   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| c) Documentation - Exhibit 10-D, (B6 [c])  | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| d) Ownership of Documents - Exhibit 10-D, (B6 [d])   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| e) Patent Rights - Exhibit 10-D, (B6 [e])  | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| f) Copyrights - Exhibit 10-D, (B6 [f])   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| g) Changes in work - Exhibit 10-D, (B6 [g])  | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| h) Delays and Extensions - Exhibit 10-D, (B6 [h])  | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| i) Termination or Abandonment - Exhibit 10-D, (B6 [I])   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| j) Remedies - Exhibit 10-D, (B6 [j])   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| k) Disputes - Exhibit 10-D, (B6 [k])   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| l) Responsibility for Claims and Liability -<br>Exhibit 10-D, (B6 [l])   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| m) General Compliance With Laws & Wage Rates -<br>Exhibit 10-D, (B6 [m])   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| n) Subcontracting, Assignment and Transfer -<br>Exhibit 10-D, [B6 (n)]   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| o) Consultant's Endorsement on Plans, etc. -<br>Exhibit 10-D, (B6 [o])   | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |
| p) DBE Considerations, Exhibit 10-D, (B6 [p])  | <input type="checkbox"/> YES | <input type="checkbox"/> NO | _____ |

q) Local Agency Proposer UDBE Commitment		
• Local Agency Proposer UDBE Commitment - (Consultant Contracts) - Exhibit 10-O1	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
• Local Agency Proposer UDBE Information - (Consultant Contracts)Exhibit 10-O1	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
• Good Faith Effort - Exhibit 15- H	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
r) Nonlobbying Certification for Federal-aid Contracts Exhibit 10-P	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
s) Debarment and Suspension Certification - Exhibit 12-E, Attachment E	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
t) Notice to Proposers Disadvantaged Business Enterprise Information - Exhibit 10-I	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
6. Insurance requirements	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
7. Ending date of contract: _____		
C. CONCLUSIONS (ACCEPTED LEGAL EXPRESSIONS, ETC.)	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
D. .SIGNATURES	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
E. CERTIFICATIONS OF CONSULTANT AND AGENCY - Exhibit 10-F&G	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____
F. COST PROPOSAL - Exhibit 10-H	<input type="checkbox"/> YES	<input type="checkbox"/> NO _____

\_\_\_\_\_  
**Contract Administrator**

\_\_\_\_\_  
**Date**

\* Use form prepared for construction contracts.

**Distribution:** All Projects: 1) Copy-- Caltrans DLAE  
2) Original copy for the Local Agency Project file

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## Exhibit 10-D Consultant Agreement Outline

**CONSULTANT AGREEMENT OUTLINE****A. INTRODUCTION**

The introduction includes the following information:

**1. Date of Agreement****2. Names, Addresses and Other Data Identifying Agreeing Parties**

State the complete name and address of each party to the agreement together with information with respect to whether the party is an individual, an agency of government, a partnership, or a corporation. If a corporation is one of the parties, show the State of Incorporation and the location of the office, where the consultant's work will be available for inspection by local agency and state representatives. For the sake of brevity, a suitable short title, such as "State," "County," "Engineer" or "Consultant," is designated and defined for each of the parties and used throughout the remainder of the agreement.

**3. Location and Description of the Project.**

State the location and description of the project as precisely and as briefly as possible. Give the name of the project, if one exist. If major structures are to be included their approximate locations, lengths, and types, if known, are to be shown.

**4. Name of Contract Administrator****B. AGREEMENT****1. Description of Work to be Done****a) Consultant Services**

Detail based on the services to be furnished by the consultant. Nature and extent verified in the negotiations to make precise statements to eliminate subsequent uncertainties and misunderstandings. It also includes any milestones and due date of each milestone; description of the deliverables; form of the deliverables; and effort involved in each deliverable. Describes acceptance criteria. Environmental documents are not considered complete until final FHWA and/or State approval. A signed CE, FONSI, or published ROD is to be approved or completed by FHWA (see Chapter 6, "Environmental Procedures" of the *Local Assistance Procedures Manual* [LAPM]).

**b) Right of Way**

State whether Right of Way requirements are to be determined and shown by the consultant; whether land surveys and computations with metes and bounds descriptions are to be made; and whether Right of Way plots are to be furnished.

c) Subsurface Investigations

State specifically whether or not the consultant has responsibility for making subsurface investigations. If borings or other specialized services are to be made by others under the supervision of the consultant, appropriate provisions are to be incorporated. Archaeological testing and data recovery guidance can be found in Chapter 8 of "Caltrans' Environmental Handbook" Volume 2 *Cultural Resources*.

d) Surveys

State whether or not the consultant has the responsibility for performing preliminary or construction surveys.

e) Local Agency Obligations

All data applicable to the project referred to in the agreement and are in possession of the local agency or another agency, or government are to be made available to the consultant. Any other assistance or services to be furnished to the consultant are to be stated clearly.

f) Conferences, Meetings, Visits to Site, Inspection of Work

The agreement provides for conferences as needed, visits to the site, and inspection of the work by representatives of the State or FHWA

g) Checking Shop Drawings

For agreements requiring the preparation of construction drawings, make provision for checking shop drawings.

h) Consultant's Services During Construction

The extent, if any of the consultant's services during the course of construction as material testing, construction surveys. etc., are specified in the agreement together with the method of payment for such services.

i) Number of Copies

The number of copies of papers or documents to be furnished, such as reports, brochures, sets of plans, specifications or Right of Way plots are specified. The type of media reports, plans, specifications, etc., are to be submitted. Provisions may be made for payment for additional copies.

## 2. Date of Beginning and Completion

Beginning and ending dates must be specified for work under the agreement. Usually the beginning date is a given number of days after a letter of notification has been sent to the consultant. The time allowed for performing the work is specified; it should be reasonable for the kind and amount of services contemplated; and it is written into the agreement. It is desirable that Critical Path Method (CPM) networks be prepared and incorporated into the contract by reference.

## 3. Payments

State the basis of payment for the services to be furnished. The services may be considered as a whole or by units. The agreement establishes a method of payment as the work progresses, or as each unit is completed; and for final settlement after all work is delivered, accepted, and approved. The agreement sets a maximum limit on the total amount payable. This also applies to all subcontracts in excess of \$25,000.



## n) Subcontractors, Assignment, and Transfer

Consultant services are considered to be a personal relationship between client and principal; therefore, agreements in which participating federal and/or state funds are furnished shall contain a clause expressly prohibiting the subcontracting, assignment, or transfer of any of the work except, as otherwise, provided for in the executed agreement. All contracts shall provide that subcontracts exceeding \$25,000 in cost shall contain all required provisions of the prime contract.

## o) Consultant's Endorsement on PS&amp;E/Other Data

The responsible consultant/engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

## p) Disadvantaged Business Enterprise Considerations

Consultants must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR, Part 26, and in Exhibit 10-I "Notice to Proposers Disadvantaged Business Enterprise Information." If the contract has an underutilized DBE (UDBE) goal, the consultant must meet the UDBE goal by using UDBEs as subconsultants or document a good faith effort to meet the goal. If a UDBE subconsultant is unable to perform, the consultant must make a good faith effort to replace him/her with another UDBE subconsultant if the goal is not otherwise met.

## q) Insurance

The contract should provide for professional liability insurance and vehicle liability insurance limits. The contract should specify the reasonable amounts of such insurance, as required by the local agency. A method of verifying that the insurance is in effect should be included. Also, a method of notifying the local agency, if the specific insurance has been changed or cancelled should also be in the contract.

## r) Signature Blocks

A signature block for each of the parties to the agreement should be provided.

**C. CONCLUSION**

The concluding clause may be any one of the many accepted legal expressions commonly used for that purpose.

**D. SIGNATURE****E. CERTIFICATIONS**

Exhibits 10-F "Certification of Consultant, Commissions & Fees" and 10-G, "Certification of Agency" must be included as attachments to the contract and made a part of.

**F. COST PRICE PROPOSAL**

The consultant's and subconsultant's final cost proposal must be attached to the contract (see Exhibit 10-H "Sample Cost Proposal").

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**Exhibit 10-I Notice to Proposers DBE Information****LOCAL AGENCY LETTERHEAD  
(DATE)****NOTICE TO PROPOSERS  
DISADVANTAGED BUSINESS ENTERPRISE  
INFORMATION**

The Agency has established an Underutilized DBE goal for this Agreement of \_\_\_\_\_ %

OR

The Agency has not established an Underutilized goal for this Agreement. However, proposers are encouraged to obtain DBE participation for this Agreement.

**1. TERMS AS USED IN THIS DOCUMENT**

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term “Underutilized Disadvantaged Business Enterprise” or “UDBE.” DBE classes that have been determined in the 2007 Caltrans Disparity Study to have a statistically significant disparity in their utilization in previously awarded transportation contracts. UDBEs include: African Americans, Native Americans, Asian-Pacific Americans, and Women.
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

**2. AUTHORITY AND RESPONSIBILITY**

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

### **3. SUBMISSION OF UDBE AND DBE INFORMATION**

If there is a UDBE goal on the contract, a “Local Agency Proposer UDBE Commitment (Consultant Contract)” (Exhibit 10-O1) form shall be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. Only UDBE participation will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

A “Local Agency Proposer DBE Information (Consultant Contract)” (Exhibit 10-O2) form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. For contracts with UDBE goals, this form collects DBE participation by DBEs owned by Hispanic American and Subcontinent Asian Americans males (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka). For contracts with no goals, this form collects information on all DBEs, including UDBEs. Even if no DBE participation will be reported, the successful proposer must execute and return the form.

### **4. DBE PARTICIPATION GENERAL INFORMATION**

It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A UDBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  - 1. The proposer is a UDBE and will meet the goal by performing work with its own forces.
  - 2. The proposer will meet the goal through work performed by UDBE subcontractors, suppliers or trucking companies.
  - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or 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.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subcontractor for each portion of work as defined in their proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- G. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

## 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at: <http://www.dot.ca.gov/hq/bep/>.
  - Click on the link in the left menu titled *Disadvantaged Business Enterprise*
  - Click on *Search for a DBE Firm* link
  - Click on *Access to the DBE Query Form* located on the first line in the center of the page
  - Searches can be performed by one or more criteria
  - Follow instructions on the screen
- C. How to Obtain a List of Certified DBEs without Internet Access
- D. DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered at: <http://caltrans-opac.ca.gov/publicat.htm>

## 6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A UDBE, PURCHASES WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 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 Agreement and of the general character described by the specifications.
- B. If the materials or supplies 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 Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not UDBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBES WILL COUNT TOWARDS DBE CREDIT, AND IF A DBE IS A UDBE, CREDIT WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:**

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Agreement, and there cannot be a contrived arrangement for the purpose of meeting the UDBE goal.
- B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. A 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. A DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

**Exhibit 10-J Standard Agreement for Subcontractor/DBE Participation****1. Subcontractors**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Agency's obligation to make payments to the Contractor.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.
- D. Any substitution of subcontractors must be approved in writing by the Agency's Contract Manager in advance of assigning work to a substitute subcontractor.

**2. Disadvantaged Business Enterprise (DBE) Participation**

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Proposers who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. If the contract has an underutilized DBE (UDBE) goal, the Consultant must meet the UDBE goal by committing UDBE participation or document a good faith effort to meet the goal. If a UDBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace him/her with another UDBE subconsultant, if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Native Americans, Asian-Pacific Americans, or Women.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. The Consultant, sub-recipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

### 3. Performance of DBE Consultant and other DBE Subconsultants/Suppliers

- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing; and other relevant factors.
- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

### 4. Prompt Payment of Funds Withheld to Subcontractors

*(Local agency to use either A,B, or C below; delete the other two.)*

- A. No retainage will be withheld by the Agency from progress payments due the prime contractor. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.
- B. No retainage will be held by the Agency from progress payments due the prime consultant. Any retainage held by the prime consultant or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within 30 days after the subconsultant's work is satisfactorily completed. Federal law (49 CFR26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the Agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultant and subconsultants.



- C. The Agency shall hold retainage from the prime consultant and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subconsultant performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime consultant and subconsultants.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

## 5. DBE Records

- A. The Consultant shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," CEM-2402F (Exhibit 17-F, Chapter 17, of the LAPM), certified correct by the Consultant or the Consultant's authorized representative and shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 25% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Manager.
- 1) Prior to the fifteenth of each month, the Consultant shall submit documentation to the Agency's Contract Manager showing the amount paid to DBE trucking companies. The Consultant shall also obtain and submit documentation to the Agency's Contract Manager 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 Consultant may count only the fee or commission the DBE receives as a result of the lease arrangement.
  - 2) The Consultant shall also submit to the Agency's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans' Monthly DBE Trucking Verification, CEM-2404(F) form provided to the Consultant by the Agency's Contract Manager.

## 6. DBE Certification and Decertification Status

If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify the Consultant in writing with the date of certification. Any changes should be reported to the Agency's Contract Manager within 30 days

**Materials or supplies purchased from DBEs will count towards DBE credit, and if a DBE is also a UDBE, purchases will count towards the UDBE goal under the following conditions:**

- A. If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 % of the cost of the materials or supplies toward DBE goals. 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 Agreement, 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 provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

*(Add the following to contracts which require trucking)*

**For DBE trucking companies: credit for DBEs will count towards DBE credit, and if a DBE is also a UDBE, credit will count towards the UDBE goal under the following conditions:**

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.
- B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

- D. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

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## Exhibit 10-M Standard Audit Program Procedures

**Pre-Award Audit**  
**(Name of Contractor)**  
**Sample-Audit Program**

**W/P No:** \_\_\_\_\_  
**Audit No:** \_\_\_\_\_  
**Contract No:** \_\_\_\_\_  
**Auditor:** \_\_\_\_\_  
**Reviewer:** \_\_\_\_\_

ITEM No.		Auditor Init/date	WorkPaper Ref.
<b>I</b>	<p><b>PURPOSE</b></p> <p>The purpose of a pre-award evaluation is to provide the approving authority with professional advice on accounting and financial matters and to assist in the award and administration of proposed consultant contracts. It also alerts both the consultant and the approving authority to potential problems relative to the Consultant's basic agreement, cost/price proposal, procurement procedures, or cost accounting system.</p>		
<b>II</b>	<p><b>SCOPE</b></p> <p>The examination shall include reviews of applicable laws and regulation, contract requirements, and Contractor's system of internal control. Audit tests of accounting records and such other auditing procedures considered necessary to meet the objectives will be conducted. Applications of audit procedures will be governed by the individual contract under audit.</p>		
<b>III</b>	<p><b>STANDARDS</b></p> <p>The audit is to be conducted in accordance with generally accepted governmental auditing standards.</p>		
<b>IV</b>	<p><b>APPLICABLE RULES AND REGULATIONS</b></p> <ol style="list-style-type: none"> <li>1. Contract Provisions</li> <li>2. CFR 48, Part 31-Federal Cost Eligibility</li> <li>3. CFR 49, Part 18-Uniform Administrative Requirements</li> </ol>		
<b>V</b>	<p><b>OBJECTIVES</b></p> <ol style="list-style-type: none"> <li>1. To determine if the consultant agreement specifically provides for the following: <ul style="list-style-type: none"> <li>• specific performance period</li> <li>• three-year record retention period and right to audit</li> <li>• method of payment.</li> <li>• references to cost principles set forth in CFR 48, Chapter 1, Part 31 for allowability of individual items of cost; CFR 49, Part 18, for administrative procedures; and OMB Circular 1-110, for nonprofit sub-recipients</li> </ul> </li> <li>2. To determine if the Consultant's cost proposal contains a breakdown of the estimate for performing the work, and that the proposed costs are reasonable in relation to actual historic costs and estimating procedures.</li> <li>3. To determine if the Consultant's cost accounting system is capable of accumulating and reasonable allocable, and allowable costs.</li> </ol>		

<p><b>VI</b></p>	<p><b><i>PRELIMINARY AUDITS STEPS</i></b></p> <ol style="list-style-type: none"> <li>1. Review the proposed contract. <ol style="list-style-type: none"> <li>a. Document your review and note any exceptions needed to be included on the audit report.</li> </ol> </li> <li>2. Review the permanent file. <ol style="list-style-type: none"> <li>a. Ascertain the nature, timing, and extent of the last internal control and accounting system review.</li> </ol> </li> <li>3. Review the cost proposal. <ol style="list-style-type: none"> <li>a. Determine if the Consultant's cost/price proposal contains a breakdown of the estimate for performing the work.</li> <li>b. Foot and extend cost data.</li> <li>c. Obtain missing cost proposal information, if necessary.</li> <li>d. Compare data with permanent file. Obtain updated cost information if necessary.</li> <li>e. Comment on usual amounts unfavorable trends or differences between current and past costs.</li> <li>f. Recalculate cost proposal in consideration of any audit exceptions.</li> </ol> </li> <li>4. Determine scope of audit. <ol style="list-style-type: none"> <li>a. Omit step 2 (field work) if: <ul style="list-style-type: none"> <li>- a recent audit found the accounting system adequate, and the accounting system is adequate to accumulate and segregated additional contract costs.</li> </ul> </li> <li>b. If the accounting system has not recently been reviewed or does not appear to be able to take on additional contract costs discuss the nature timing and extent of audit procedures with superior.</li> </ol> </li> <li>5. Prepare preliminary Audit Plan and Time Budget</li> <li>6. Contact the Contract Administrator to inform him/her of the following: <ol style="list-style-type: none"> <li>a. Scheduled date of field work</li> <li>b. Tentative completion date</li> <li>c. Any anticipated problems etc</li> <li>d. Any additional anticipated contract costs</li> </ol> </li> </ol> <p><b>Note:</b> The Contract Administrator should be kept abreast of all pertinent audit issues. Any problems in obtaining necessary information, etc., should be discussed with him/her immediately and documented in the work papers.</p>		
<p><b>VII</b></p>	<p><b><i>AUDIT STEPS-FIELD WORK</i></b></p> <ol style="list-style-type: none"> <li>1. Contact the Contractor and arrange a date for the audit. <ol style="list-style-type: none"> <li>a. Inform the Contractor of the type of information, records, personnel needed, and arrange for work space.</li> <li>b. Request that the Contractor prepare schedules of the calculations of all billing rates such as overhead, fringe benefits, in-house direct cost billing rates, and any other rates used in billing. If possible, have these schedules sent to the auditor for review before the date of field work.</li> <li>c. Inquire whether the Contractor has been audited within the previous year by the DCAA or similar federal agencies, or has had an independent CPA review overhead, internal controls, or project costing systems. If so, obtain a copy of the audit report and/or review working papers for consideration when evaluating internal controls, overhead rates, etc.</li> </ol> </li> </ol>		

## EXHIBIT 10-O1 Local Agency Proposer UDBE Commitment (Consultant Contracts)

**NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM**

LOCAL AGENCY: \_\_\_\_\_ LOCATION: \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_

PROPOSAL DATE: \_\_\_\_\_

PROPOSER'S NAME: \_\_\_\_\_

CONTRACT UDBE GOAL (%): \_\_\_\_\_

WORK ITEM NO.	DESCRIPTION OR SERVICES TO BE SUBCONTRACTED (or contracted if the proposer is a UDBE)	UDBE CERT NO. AND EXPIRATION DATE	NAME OF EACH UDBE (Must be certified at the time proposals are due - include UDBE address and phone number)	PERCENT PARTICIPATION OF EACH UDBE

**For Local Agency to Complete:**

Local Agency Proposal Number: \_\_\_\_\_

Federal-Aid Project Number: \_\_\_\_\_

Federal Share: \_\_\_\_\_

Proposal Date: \_\_\_\_\_

Local Agency certifies that the UDBE certifications have been verified and all  
information is complete and accurate/unless noted otherwise.\_\_\_\_\_  
Print Name  
Local Agency Representative\_\_\_\_\_  
Signature\_\_\_\_\_  
Date

(Area Code) Telephone Number: \_\_\_\_\_

Total Claimed UDBE  
Commitment\_\_\_\_\_  
%\_\_\_\_\_  
Signature of Proposer\_\_\_\_\_  
Date (Area Code) Tel. No.\_\_\_\_\_  
Person to Contact (Please Type or Print)Local Agency Proposer UDBE Commitment (Consultant Contracts)  
(Rev 6/27/09)**Distribution:** (1) Original - Local agency files

**INSTRUCTIONS – LOCAL AGENCY PROPOSER UDBE COMMITMENT  
(CONSULTANT CONTRACTS)**

**ALL PROPOSERS:**

**PLEASE NOTE:** It is the proposer's responsibility to verify that the UDBE(s) falls into one of the following groups in order to count towards the UDBE contract goal: 1) African Americans; 2) Asian-Pacific Americans; 3) Native Americans; 4) Women. This information must be submitted with your proposal. Failure to submit the required UDBE commitment will be grounds for finding the proposal nonresponsive.

A "UDBE" is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Native Americans, Asian-Pacific Americans, or Women.

The form requires specific information regarding the consultant contract: Local Agency, Location, Project Description, Proposal Date, Proposer's Name, and Contract UDBE Goal.

The form has a column for the Work Item Number and Description or Services to be subcontracted to UDBEs (or performed if the proposer is a UDBE). The UDBE prime contractors shall indicate all work to be performed by UDBEs including work to be performed by its own forces, if a UDBE. The UDBE shall provide a certification number to the Consultant and notify the Consultant in writing with the date of decertification if their status should change during the course of the contract. Enter UDBE prime consultant and subconsultant certification numbers. The form has a column for the Names of certified UDBEs to perform the work (must be certified on the date proposals are due and include UDBE address and phone number).

There is a column for the percent participation of each UDBE. Enter the Total Claimed UDBE Participation percentage of items of work submitted with proposal pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the UDBE, describe exact portion of time to be performed or furnished by the UDBE.) See "Notice to Proposers Disadvantaged Business Enterprise Information," (Exhibit 10-I) to determine how to count the participation of UDBE firms. **Note:** If the proposer has not met the contract goal, the local agency must evaluate the proposer's good faith efforts to meet the goal in order to be considered for award of the contract.

Exhibit 10-O1 must be signed and dated by the consultant submitting the proposal. Also list a phone number in the space provided and print the name of the person to contact.

**For the Successful Proposer only, local agencies** should complete the Proposal Number, Federal-aid Project Number, Federal Share, and Proposal Date fields and verify that all information is complete and accurate before filing.



## EXHIBIT 10-O2 Local Agency Proposer DBE Information (Consultant Contracts)

**NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM**

LOCAL AGENCY: \_\_\_\_\_ LOCATION: \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_

TOTAL CONTRACT AMOUNT (\$): \_\_\_\_\_

PROPOSER'S NAME: \_\_\_\_\_

WORK ITEM NO.	DESCRIPTION OR SERVICES TO BE SUBCONTRACTED (or contracted if the proposer is a DBE)	DBE CERT NO. AND EXPIRATION DATE	NAME OF EACH DBE (Must be certified at the time proposals are due - include DBE address and phone number)	DOLLAR AMOUNT OF EACH DBE

**For Local Agency to Complete:**

Local Agency Contract Number: \_\_\_\_\_

Federal-Aid Project Number: \_\_\_\_\_

Federal Share: \_\_\_\_\_

Contract Award: \_\_\_\_\_

Local Agency certifies that the DBE certifications have been verified and all  
information is complete and accurate.

_____	_____	_____
Print Name	Signature	Date
Local Agency Representative		

(Area Code) Telephone Number: \_\_\_\_\_

Total Claimed DBE  
Participation\$ \_\_\_\_\_  
\_\_\_\_\_ %\_\_\_\_\_  
Signature of Proposer\_\_\_\_\_  
Date (Area Code) Tel. No.\_\_\_\_\_  
Person to Contact (Please Type or Print)**For Caltrans Review:**

_____	_____	_____
Print Name	Signature	Date
Caltrans District Local Assistance Engineer		

Local Agency Proposer DBE Information (Consultant Contracts)  
(Rev 6/27/09)

**Distribution:** (1) Copy - Fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days after contract execution.  
Failure to send a copy to the DLAE within 15 days after contract execution may result in deobligation of funds for this project.

(2) Original - Local agency files

**INSTRUCTIONS - LOCAL AGENCY PROPOSER DBE INFORMATION  
(CONSULTANT CONTRACTS)**

**SUCCESSFUL PROPOSER:**

The form requires specific information regarding the consultant or other contract: Local Agency, Location, Project Description, Total Contract Amount, Proposal Date, and successful Proposer's Name.

The form has a column for the Work Item Number and Description or Services to be Subcontracted to DBEs. The prime consultant shall indicate all work to be performed by DBEs including, if the prime consultant is a DBE, work performed by its own forces, if a DBE. The DBE shall provide a certification number to the prime consultant. Enter DBE prime consultant's and subconsultant's certification number. The form has a column for the Names of DBE certified contractors to perform the work (must be certified on or before the proposals are due and include DBE address and phone number).

Enter the Total Claimed DBE Participation dollar amount of items of work in the total DBE Dollar Amount column. (If 100% of item is not to be performed by the DBE, describe exact portion of time to be performed by the DBE.) See "Notice to Proposers Disadvantaged Business Enterprise Information," ( Exhibit 10-I) to determine how to count the participation of DBE firms.

Exhibit 10-O2 must be signed and dated by the successful proposer at contract execution. Also list a phone number in the space provided and print the name of the person to contact.

**Local agencies** should complete the Contract Number, Federal-aid Project Number, Federal Share, and Contract Award fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of contract execution. Failure to submit a completed and accurate form within the 15-day time period may result in the deobligation of funds on this project.

**District DBE Coordinator** should verify that all information is complete and accurate. Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

**Exhibit 10-P Nonlobbying Certification For Federal-Aid Contracts**

The prospective participant certifies by signing and submitting this proposal/bid to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his/her proposal/bid that he/she shall require that the language of this certification be included in all lower-tier subcontracts which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

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**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 piling, bridges, steel scaffolding and false work.
- Materials that remain in place at the contractor's convenience such as sheet piling 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

All federal-aid projects are subject to the legislative and regulatory DBE requirements. The main objective is to ensure that DBE firms have an opportunity to participate in federally funded projects.

If there is an Underutilized DBE (UDBE) goal placed on the contract, the contractor must meet the goal or document a good faith effort to meet the contract goal by using UDBEs (see Chapter 9, "Civil Rights and Disadvantaged Business Enterprises," of the LAPM). Good faith efforts shall be documented and verified (Chapter 15, Exhibit 15-H "UDBE Information-Good Faith Efforts"). If a UDBE subcontractor is unable to perform, the contractor must make a good faith effort to replace him/her with another UDBE subcontractor if the goal is not otherwise met.

DBE classes that have been determined in the 2007 Caltrans Disparity Study to have a statistically significant disparity in their utilization in previously awarded transportation contracts. UDBEs include: African Americans, Native Americans, Asian-Pacific Americans, and Women.



Some concepts for developing price adjustment clauses include:

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

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

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

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

## PROJECT LABOR AGREEMENTS

A Project Labor Agreement (PLA), also called a union agreement, is a contract between labor unions, contractors and governmental agencies. Presidential Executive Order 13202 (signed February 17, 2001) was issued to limit executive branch agencies from using PLAs. Essentially, executive agencies may not require or prohibit contractors to enter into PLAs. Agencies also may not discriminate against contractors based on PLAs. In addition, despite the limits on executive agencies, contractors are not barred from freely agreeing to PLAs.

Executive Order 13202 was amended to settle concerns about existing PLAs on projects with multiple contracts. Amendments in Executive Order 13208 allow an agency to request an exemption to the use of PLAs, only if the PLA was in effect before February 17, 2001.

Requests for exemption must be written and must include the PLA, specific bid information, and the reason why the agency believes the exemption should be granted. PLAs are allowed only if the FHWA Administrator exempts a project. Requests for exemption should be referred to the DLAE.

Executive Orders 13202 and 13208 are available online at the following Webster:  
[www.whitehouse.gov/news/releases/2001/02/20010221.html](http://www.whitehouse.gov/news/releases/2001/02/20010221.html)  
[www.whitehouse.gov/news/releases/2001/04/20010406-1.html](http://www.whitehouse.gov/news/releases/2001/04/20010406-1.html)

## 12.11 OPTIONAL CONTRACT PROVISIONS

### ADDITIVE OR DEDUCTIVE BID ITEMS

Local agencies may use “additive or deductive bid items” on federal-aid projects provided they use one of the following methods, with one exception, specified in California Public Contract Code, Section 20103.8. That one exception is the method described in subparagraph 20103.8(d) which cannot be used on federal-aid projects because it does not provide for a public opening of bids with full disclosure nor a predetermined method of identifying the lowest bidder.

**“20103.8.** A local agency may require a bid for a public works **contract** to include prices for items that may be added to, or deducted from, the scope of work in the **contract** for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of a specification, only the method provided by **subdivision (a)** will be used:

- (a) The lowest bid shall be the lowest bid price on the base **contract** without consideration of the prices on the additive or deductive items.
- (b) The lowest bid shall be the lowest total of the bid prices on the base **contract** and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.
- (c) The lowest bid shall be the lowest total of the bid prices on the base **contract** and those additive or deductive items that when taken in order from a specifically identified list of those items in the solicitation, and added to, or subtracted from, the base **contract**, are less than, or equal to, a funding amount publicly disclosed by the local agency before the first bid is opened.
- (d) Deleted as it is not to be used.

A responsible bidder who submitted the lowest bid before the first bid is opened as determined by this section shall be awarded the **contract**, if it is awarded. This section does not preclude the local agency from adding to or deducting from the **contract** any of the additive or deductive items after the lowest responsible bidder has been determined.

- e) Nothing in this section shall preclude the prequalification of subcontractors.”

### ALTERNATE BIDS

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

**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 "Delegated" subject to minimal FHWA oversight. A Public Interest Finding has been submitted to the DLAE for review and filed in the contract records justifying the method.
- ☐ The project is "High Profile" subject to a high degree of FHWA 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 "Delegated" subject to minimal FHWA oversight. A Public Interest Finding has been submitted to the DLAE for review and filed in the contract records justifying the method.
- ☐ The project is "High Profile" subject to a high degree of FHWA 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 )

- ☐ VE analysis has been performed on this project and a copy of the analysis has been submitted to the DLAE for forwarding to the Caltrans District Value Analysis Coordinator.
- ☐ The project is not a bridge project. VE analysis has not been performed as the estimated total project cost is <\$25 million.
- ☐ The project is a bridge project. VE analysis has not been performed as the total project cost is <\$20 million.

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

**A. Geometric Design Standards Used** (Check appropriate box)

- ☐ Caltrans Design Standards (on State Highway System)
- ☐ Current AASHTO Standards
- ☐ 3R Projects - Minimum Standards for Geometric Design of Federal-Aid Resurfacing, Restoration, and Rehabilitation Projects on Local Streets and Roads, *Local 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

**VIII. BRIDGE DESIGN PROCEDURES** (Check the appropriate box)

All bridges have been designed in accordance with the current edition of the *Caltrans Bridge Design Specifications Manual*.

YES DOES NOT APPLY (Bridge construction not included in the project)

☐ ☐

**IX. STANDARD PLANS** (Check appropriate box)

- ☐ Caltrans *Standard Plans* ☐ *Standard Plans for Public Works Construction*  
☐ Local Approved Standard Plans:

\_\_\_\_\_ Date signed (on behalf of the local agency) by a person in responsible charge and who is registered professional engineer licensed to practice in the State of California.

**X. PROJECT PLANS AND SPECIFICATIONS** (Check box if requirements met)

- ☐ Cover sheet of plans and specifications signed and stamped on behalf of the local agency by the person in responsible charge, and who is a registered professional engineer licensed to practice in the State of California.
- ☐ Traffic Control Plans or reference to Standard Plan and Signs/Striping Plans included. (Note: Additionally, Traffic Management Plans are required to be on file for all reconstruction, rehabilitation, and other projects[including projects on the State Highway System not funded by the State], if significant traffic delays are anticipated and as a result from project activities)
- ☐ Erosion Control Plan
- ☐ ADA is being fully complied with including *Federal ADA Standards for Accessible Guidelines for Buildings and Facilities* (ADAAG), Title 24 of the California Code of Regulations and local codes.

**XI. STANDARD SPECIFICATIONS** (Check Standards used)

- ☐ Caltrans *Standard Specifications*
- ☐ *Standard Specifications for Public Works Construction (Green Book)*
- ☐ Locally Approved Standard Specifications

**XII. REQUIRED FEDERAL CONTRACT PROVISIONS****A. General Federal Requirements** (Check appropriate box and indicate page number)

- |   |                 |
|---|-----------------|
| <input type="checkbox"/> Caltrans SSP – Section 14. Federal Requirements For Federal-aid Projects (Attachment A, FR-1 & FR-2) is included. .... | <b>Page No.</b> |
| <input type="checkbox"/> Equivalent provisions are included. ....   |                 |

**B. FHWA Form 1273 ..... Page No.**

**1. Incorporation of FHWA Form 1273 into Contract** (Check appropriate box and indicate page number)

- ☐ An unmodified copy of FHWA Form 1273 "Required Contract Provisions Federal-aid Construction Contracts" (Attachment B, FR-3 thru FR-14) has been physically incorporated into this contract.....
- ☐ A modified copy of FHWA Form 1273 "Required Contract Provisions Federal-aid Construction Contracts" has been physically incorporated into this contract.....

**2. Modification of FHWA Form 1273** (If the provisions contained in FHWA Form 1273 will be modified, fill in the required project information before completing Sections 2.a thru 2.d.)

**Estimated Construction Contract Goal** \_\_\_\_\_

**a. Section IV. Payment of Predetermined Wages** (Check appropriate box)

This section applies to all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed or may be specified elsewhere in the contract that it does not apply.

- ☐ Section IV has not been modified.
- ☐ Section IV has been *crossed out/removed/specified elsewhere in the contract that it does not apply.* (Indicate type of modification).

**b. Section V. Statements and Payrolls** (Check appropriate box)

This section applies to all federal-aid highway construction projects exceeding \$2,000 and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or may be specified elsewhere in the contract that it does not apply.

- ☐ Section V has not been modified.
- ☐ Section V has been *crossed out/removed/specified elsewhere in the contract that it does not apply.* (Indicate type of modification)

**c. Section VI. Record of Materials, Supplies, and Labor** (Check appropriate box)

See PS&E Checklist Instructions (Exhibit 12-E of this chapter) for applicability.

- ☐ Section VI has not been modified.
- ☐ Section VI has been *crossed out/removed/specified elsewhere in the contract that it does not apply.* (Indicate type of modification)

**d. Section VII. Subletting or Assigning the Contract** (Check appropriate box)

This section applies to all federal-aid highway projects.

- ☐ Section VII has not been modified.

- ☐ Section VII has been *crossed out/removed/specified elsewhere in the contract that it does not apply.*  
(Indicate type of modification)

Page No.

**C. Certification/Disclosure Forms** (Check if included and indicate page number)

- ☐ 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)..... \_\_\_\_\_
- ☐ Equivalent provisions (Attach complete listing, including page numbers)..... \_\_\_\_\_

**D. Liquidated Damages** (Check appropriate box and indicate page number)

- ☐ Caltrans SSP Section 4. Beginning of Work, Time of Completion and Liquidated Damages  
(Exhibit 12-E, Attachment I) is included in this contract ..... \_\_\_\_\_
- ☐ Equivalent provisions are included. .... \_\_\_\_\_

**E. Disadvantaged Business Enterprise (DBE)/Subcontracting**

## 1. UDBE Goal (Refer to Exhibit 12-E, PS&amp;E Instruction Checklist)

- ☐ Local Agency non-zero UDBE goal percentage for this contract is: \_\_\_\_\_  
OR

- ☐ The UDBE goal for this contract is zero percent. Documentation verifying this determination is attached to his PS&E Checklist and is also on file with the local agency. Refer to Exhibit 12-E, PS&E Checklist Instructions.

OR

- ☐ This contract has no UDBE goal because:

- ☐ The AADPL goal has been met for this federal fiscal year.
- ☐ This contract has no subcontracting opportunities for UDBE participation.
- ☐ This contract is "nonprofit."
- ☐ Other, specify: \_\_\_\_\_

Documentation verifying the above "no UDBE goal" determination is attached to the PS&E Checklist and is also on file with the local agency. Refer to Exhibit 12-E, "PS&E Checklist Instructions."

**2. Contracts Provisions (For use with all Federal-aid contracts )**

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). Check if included and indicate page number.

**a. Caltrans Standard Special Provisions**

- ☐ 2-1.01 GENERAL Required Listing of Proposed Subcontractors and Required Contract Assurance Statement (Exhibit 12-E, Attachment H) or *Equivalent Provisions* .....
- ☐ 2-1.015 Federal Lobbying Restrictions (Exhibit 12-E, Attachment H) or *Equivalent Provisions* .....
- ☐ 2-1.02 Disadvantaged Business Enterprise (DBE) (Exhibit 12-E, Attachment H) or *Equivalent Provisions* .....
- ☐ 3- Award and Execution of Contract (Exhibit 12-E, Attachment I) or *Equivalent Provisions* .....
- ☐ Caltrans SSP 5-1. Subcontractor and DBE Records (Exhibit 12-E, Attachment J) or *Equivalent Provisions* .....
- ☐ Caltrans SSP 5-1. DBE Certification Status Change (Exhibit 12-E Attachment J) or *Equivalent Provisions* .....
- ☐ Caltrans SSP 5-1. Performance of Subcontractors (Exhibit 12-E, Attachment K) or *Equivalent Provisions* .....
- ☐ Caltrans SSP 5-1. Subcontracting (Exhibit 12-E, Attachment L) or *Equivalent Provisions* .....
- ☐ Caltrans SSP 5-1. Prompt Progress Payments to Subcontractors (Exhibit 12-E, Attachment L) or *Equivalent Provisions* .....
- ☐ Caltrans SSP 5-1. Prompt Payment of Withheld Funds to Subcontractors (Exhibit 12-E, Attachment L) or *Equivalent Provisions* .....

**b. The following forms are applicable with the above SSPs.**

- ☐ Listing of Subcontractors (Form in Sample Proposal and Contract) or *Equivalent Form* .....
- ☐ Local Agency Bidder UBDE Commitment (Construction Contracts)(Exhibit 15-G1) or *Equivalent Provisions* .....
- ☐ Local Agency Bidder DBE Information Form (Exhibit 15-G2) or *Equivalent Provisions* .....
- ☐ DBE Certification Status Change (Exhibit 17-O) or *Equivalent Provisions* .....



- ☐ UDBE Information - Good Faith Efforts (Exhibit 15-H)  
If applicable .....
- ☐ Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractor  
(Exhibit 17-F) or *Equivalent Provisions* .....
- ☐ Bidders'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.)

- ☐ Caltrans SSP 5-1- Buy America Requirements (Exhibit 12-E, Attachment M)
- ☐ Equivalent provisions are included .....
- ☐ Buy America specifications are not included in contract.
- ☐ Waiver for the following has been approved by FHWA: \_\_\_\_\_ Date \_\_\_\_\_.

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

- ☐ The project has less than 100 working days. A Federal Trainee goal and special provisions are not required.
- ☐ Analysis of the Engineers Estimate has the dollar value under \$200,000. A Federal Trainee goal and special  
provisions are not required.
- ☐ Caltrans SSP – Federal Requirement Training Special Provisions  
(Exhibit 12-E, Attachment B, FR-14 through FR-16) are included. (The Trainee goal is \_\_\_\_\_.) \_\_\_\_\_
- ☐ Equivalent provisions are included (The Trainee goal is \_\_\_\_\_.).....

**H. Federal Wage Rates** (Check appropriate box and indicate page number if Federal Wages Rates are included)

- ☐ 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)

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

**J. American Recovery and Reinvestment Act (Recovery Act) Funds (Check appropriate box and indicate page number if special provisions are included)**

- ☐ This is a Recovery Act funded project and the required Recovery Act provisions (Exhibit 12-E, Attachment L) are included.....
- ☐ This project does not involve ARRA Funds.....

**XIII. RESTRICTED CONTRACT PROVISIONS (CHECK APPROPRIATE BOX)**

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

- ☐ Not included.
- ☐ Included. The project is on or near the \_\_\_\_\_ Indian Reservation.

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

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

**C. Price Adjustment Clauses (Check appropriate box)**

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

**D. Warranty Clauses (Complete this section if project is on the NHS)**

- ☐ Warranty Clauses are not included.
- ☐ Warranty Clauses are included. Documentation of the required conditions on the use of these clauses is in the project files.

**E. Proprietary Items (Complete this section if project is on the NHS)**

- ☐ Proprietary Items are not included.
- ☐ Proprietary Items are included. A Public Interest Finding justifying the use has been approved and documented in the project files.

**XIV. MATERIALS & EQUIPMENT (Check appropriate box)**

**A. Publicly Owned Equipment (for use by Contractor). (Check appropriate box)**

- ☐ Not included.
- ☐ Included. A Public Interest Finding justifying this use is in project files and the project specifications meet the requirements for federal participation listed in Chapter 12.

**B. Equipment Purchases for Local Ownership** (Check appropriate box)

- ☐ Not included.
- ☐ Included. Amount charged to construction engineering will be limited to amortized equipment cost (over its useful life) attributable to the time the equipment is used on the project.

**C. Convict Produced Materials**

- ☐ Not included.
- ☐ Included. The conditions placed on the use of these materials by the contractor meet federal requirements and are included in the contract specifications.

**D. Local Agency Furnished Materials** (Check appropriate box)

- ☐ Local Agency Furnished Materials are not included.  
(If Local Agency Furnished Materials are included check appropriate box.)
- ☐ Local Agency Furnished Materials have been acquired on the basis of competitive bidding.
- ☐ A Public Interest Finding is on file in the contract records justifying another method of acquisition.

**XV. PRELIMINARY ESTIMATE** (Check boxes if requirements met)

- ☐ Exhibit 12-A or equivalent has been completed and is attached.
- ☐ The estimate is broken down into items sufficient in detail to provide an initial prediction of the financial obligation to be incurred by the local agency, State and FHWA and to permit an effective review and comparison of the bids received.
- ☐ Non-participating items of work have been identified and segregated from the estimated cost of work eligible for federal-aid.

(If project is funded with more than one type of federal-aid, check box if requirement was met.)

- ☐ The estimate has been segregated by fund types for use in preparing the "Request for Authorization for Construction" (Detail Record) and the Finance Letter.

**XVI. MAJOR PROJECTS WITH TOTAL COST OF \$100 MILLION TO \$500 MILLION OR MORE** (Check boxes if requirements met)

The total cost of this project is:

- ☐ Expected to be less than \$100 million.
- ☐ Expected to be \$100 million or more, but less than \$500 million:
- ☐ A Financial Plan is required and has been prepared and submitted to the DLAE.

Approval Date: \_\_\_\_\_

- ☐ Expected to be \$500 million or more and:
- ☐ A Project Management Plan has been prepared and submitted to the DLAE.  
Approval Date: \_\_\_\_\_
- ☐ An Annual Financial Plan has been prepared and submitted to the DLAE

**XVII. LOCAL AGENCY SIGNATURE**

This Federal Contract Provisions checklist has been prepared in accordance with Chapter 12 “Plans, Specifications & Estimate,” of the *Local Assistance Procedures Manual*.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**XVIII. CALTRANS ACCEPTANCE**

Check appropriate acceptance statement:

- ☐ I have not personally inspected the subject project PS&E package, but I am aware of the scope of the project. I have reviewed this “PS&E CHECKLIST” and agree it is complete and appears to have been prepared in accordance Chapter 12 “Plans, Specifications & Estimate,” of the *Local Assistance Procedures Manual*.
- ☐ I have inspected the specifications portion of the subject project PS&E package and I am aware of the scope of the project. I have reviewed this “PS&E CHECKLIST” and agree it is complete and appears to have been prepared in accordance with Chapter 12 “Plans, Specifications & Estimate,” of the *Local Assistance Procedures Manual*. I have also verified that the indicated Required Federal Contract Provisions are included in the specifications.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

**Distribution:** 1) Original with PS&E Certification - DLAE  
2) Original “Accepted” copy with PS&E Certification - DLAE file  
3) One “Accepted” copy to be returned to Local Agency

## PS&E CHECKLIST INSTRUCTIONS

The PS&E Checklist is to be completed by the local agency in accordance with the following instructions and attached to the PS&E Certification.

### I. HIGHWAY SYSTEM

Some PS&E requirements depend on whether the project is on or off the National Highway System (NHS). See *Local Assistance Program Guidelines* (LAPG), Chapter 3 Section 3.3 “Federal-Aid Routes and Functional Classifications,” for a listing of the local agency NHS routes.

Check the appropriate box indicating on which system the project is located.

### II. FUNCTIONAL CLASSIFICATION

Federal-aid eligibility, design standards as well as some PS&E requirements depend on the functional classification of the route the project is on. See LAPG, Chapter 3, “Federal-Aid Routes and Functional Classifications,” for a discussion of the functional classification system.

Check the appropriate box

### III. TYPE OF CONSTRUCTION

Design standards as well as some oversight responsibilities depend on the type of construction. See Chapter 2 of this manual for definitions and check the appropriate box.

### IV. METHOD OF CONSTRUCTION

#### A. CONTRACTING METHOD

Unless justified by a Public Interest Finding (Exhibit 12-F in this chapter), all federal-aid construction contracts must be awarded to the lowest responsible bidder of a competitive bid process. For “Delegated” projects that are subject to minimal FHWA oversight, the local agency may approve the Public Interest Finding if it meets the conditions described in Chapter 12. Caltrans and FHWA must approve the Public Interest Finding for “High Profile” projects that are subject to a high degree of FHWA oversight before accepting the local agency’s PS&E Certification.

Check the appropriate box.

#### B. FORCE ACCOUNT (DAY LABOR)

A Public Interest Finding (Exhibit 12-F in this chapter) must justify any force account construction work performed by the local agency. When the entire project will be constructed by the local agency, and the project is “High Profile,” subject to a high degree of FHWA oversight, the Public Interest Finding shall be submitted to the District Local Assistance Engineer (DLAE) for Caltrans and FHWA approval before accepting the local agency’s PS&E Certification. The Public Interest Finding will be approved by the local agency for all other force account (day labor) work.

Check the appropriate boxes and process the Public Interest Finding as required.

## V. ENVIRONMENTAL ANALYSIS

The preparation of PS&E must reflect findings of the environmental analysis performed for the project. By checking the box, the agency certifies that the necessary actions called for by the environmental documents have been responded to in the PS&E. Failure to check the box will result in denial of the Request for Authorization.

## VI. VALUE ENGINEERING (VE) ANALYSIS

The application of value engineering (VE) is required for: (1) all federal-aid highway projects with a total estimated project cost of \$25 million or more, and (2) all bridge projects with a total estimated project cost of \$20 million or more. Check appropriate box.

## VII. GEOMETRIC DESIGN STANDARDS

If the project does not change existing geometrics, Section A and B do not apply and the local agency is not required to check any boxes in these sections.

### A. GEOMETRIC DESIGN STANDARDS USED

New and reconstruction projects on the NHS shall be designed in accordance with Standards as defined in the current edition of *A Policy on Geometric Design of Highways and Streets*, published by the American Association of State Highway and Transportation Officials (AASHTO). The minimum standards for geometric design of local federal-aid resurfacing, restoration and rehabilitation (3R) projects on the NHS are shown in Tables 11-1 through 11-10 in Exhibit 11-A. Local geometric design standards that have been developed for use on locally funded new and reconstruction, or 3R projects off the NHS, may be used subject to the conditions listed in Chapter 11, "Design Standards."

Check appropriate box if this section applies.

### B. DEVIATIONS FROM CONTROLLING CRITERIA

The controlling criteria listed are considered to be of primary importance for highway safety, and deviations require design exception approval procedures as described in Chapter 11, "Design Standards," of the LAPM. Check whether the criteria have been met on this project. If a design exception has been approved, indicate the approval date. Documentation shall be retained in the project files.

## VIII. BRIDGE DESIGN PROCEDURES

All bridges shall be designed in accordance with the current edition of the *Caltrans Bridge Design Specifications Manual*. Check if requirement met, or if the project does not include any bridge construction indicate requirement does not apply.

## IX. STANDARD PLANS

For projects off the State Highway System, the local agency may use Caltrans Standard Plans, Standard Plans for Public Works Construction, or subject to the conditions described in Chapter 11, "Locally Approved Standard Plans." Check appropriate box.

**X. PROJECT PLANS AND SPECIFICATIONS**

Project plans shall be signed and stamped on behalf of the local agency by the person in responsible charge and who is a registered professional engineer licensed to practice in the State of California. A traffic control plan shall be included in the PS&E for all federal-aid highway construction projects. Check boxes to indicate requirements are met. Failure to check both boxes will result in denial of the Request for Authorization.

Erosion control plans may be required, see Section 12.7 Plans, in the LAPM. If required, check box.

Project plans and specifications may be required to meet the Americans with Disabilities Act (ADA) requirements under federal 28 CFR, Part 35 or Part 36. Whenever applicable, project plans will need to comply with the federal 28 CFR, Part 35 or Part 36, and the *California and Local Building Codes* within the project limits. In accordance with 28 CFR Sec. 35.151, curbs ramps must meet current ADA standards if the project includes streets that are to be newly constructed or altered (includes repaving). For ADA requirements, see Chapter 11 "Design Standards," and Section 12.7 of this chapter. If ADA requirements apply and will be complied with, check box.

**XI. STANDARD SPECIFICATIONS**

For projects off the State Highway System, the local agency may use *Caltrans Standard Specifications, the Standard Specifications for Public Works Construction*, or subject to the conditions described in Chapter 11, "Locally Approved Standard Specifications." Check appropriate box.

**XII. REQUIRED FEDERAL CONTRACT PROVISIONS (SEE ATTACHMENTS A thru N, THIS EXHIBIT)****A. GENERAL FEDERAL REQUIREMENTS**

General provisions must be included to reference FHWA Form 1273, Performance of Previous Contract, Noncollusion Provision and Participation by Minority Business Enterprises in Subcontracting. Caltrans SSP - Section 14. "Federal Requirements for Federal-aid Construction Projects" (Attachment A, pages FR-1 & FR-2) or equivalent provisions shall be used.

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

**B. FHWA FORM 1273****1. Incorporation of FHWA Form 1273 into Contract**

FHWA Form 1273- Required Contract Provisions, Federal-aid Construction Contracts, (Exclusive of Appalachian Contracts)(Attachment B, pages FR-3 thru FR-14) shall be made a part of, and physically incorporated into all contracts as well as appropriate subcontracts and purchase orders. The provisions contained in FHWA Form-1273 are generally applicable to all federal-aid construction projects. Except as described below, the form may not be modified.

Check the appropriate box (i.e., unmodified or modified) and indicate page number.

**2. Modification of FHWA Form 1273**

If the provisions contained in FHWA Form 1273 will be modified, fill in the required project information before completing Sections 2.a. thru 2.d.

**a. Section IV. Payment of Predetermined Wages**

This section applies to all federal-aid highway construction projects exceeding \$2,000 dollars and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**b. Section V. Statements and Payrolls**

This section applies to all federal-aid highway construction projects exceeding \$2,000 dollars and to all related subcontracts, except for projects not located on the Federal-aid System (roadways classified as local roads or rural minor collectors), which are exempted. If exempted, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**c. Section VI. Record of Materials, Supplies, and Labor**

This section applies to all federal-aid projects in excess of \$1 million only on the NHS. Certain projects are excluded on the NHS. If not applicable, this section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**d. Section VII. Subletting or Assigning the Contract**

This section applies to all federal-aid projects. This section may be crossed out, removed, or it may be specified elsewhere in the contract that it does not apply, if the local agency chooses 50 percent as the minimum percentage of work, excluding any identified specialty items, as specified in the *Caltrans Standard Specifications* or the Greenbook Specifications. A special provision must be included specifying which percentage is to be used.

Check the appropriate box (i.e., not modified or modified). If this section has been modified, indicate how the section was modified (i.e., crossed out, removed or specified elsewhere in the contract that it does not apply).

**C. CERTIFICATION/DISCLOSURE FORMS**

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

*Equal Employment Opportunity Certification (Attachment C)*

*Noncollusion Affidavit (Attachment D)*

*Debarment and Suspension Certification (Attachment E)*



*Nonlobbying Certification for Federal-aid Contracts* (Attachment F)  
*Disclosure of Lobbying Activities* (Attachment G)

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

**D. LIQUIDATED DAMAGES**

Provisions for liquidated damages shall be included in all federal-aid contracts 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)/SUBCONTRACTING**

**1. UDBE Goal**

Individual UDBE contract goals will be established based on the criteria for establishing contract goals identified in the local agency’s AADPL. Complete evaluation documentation is required and shall be retained for each contract (see DBE references in the LAPM). For contracts that contain a specific UDBE goal, Caltrans SSPs (and the referenced *Caltrans Standard Specifications*) are required to describe the DBE policy, the UDBE contract goal, eligibility criteria, good faith effort requirements, sanctions on failure to comply, procedures for counting UDBE participation, award documentation procedures, post-award compliance procedures, and required records and reporting. “Proposal Requirements and Conditions (Attachment H)” includes requirements for UDBE subcontract listing, Federal Lobbying Restrictions, Disadvantaged Business requirements, and the UDBE goal for the contract.

In some cases, the contract UDBE goal may be zero due to the extremely limited subcontracting opportunities for UDBEs, the lack of certified UDBEs in the geographic area in which work is to be performed, or other reasons. Documentation is required verifying that the local agency has determined that a zero percent UDBE goal is appropriate. Documentation may be based on the AADPL methodology with the specific project-related work codes and UDBEs highlighted, or, if the project had not been included in the AADPL methodology, a separate contract goal methodology must be provided. The DLAE will review and approve the "zero" goal methodology.

In some cases there may be no contract goal (which is different than zero percent goal) if, for example, the AADPL goal has already been met for the federal fiscal year, or the contract is “sole-source” or “non-profit”.

Fill in the required UDBE goal information before completing the remainder of this section.

**2. Contract Provisions**

For all federal-aid projects, Caltrans SSPs (and the referenced *Caltrans Standard Specifications*), or equivalent provisions, are required to describe subcontractor and DBE Program Policy, 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 Condition” (Exhibit 12-E, Attachment H also in Sample Notice to Contractors & Special Provisions) includes requirements for DBE subcontractor listing, Federal Lobbying Restrictions, DBE, and other requirements.

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.

**J. AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) FUNDS**

In accordance with Section 902 of the Recovery Act of 2009, the U.S. Comptroller General and the Inspector General shall have the authority to examine records and interview employees. Recovery Act projects also require additional accountability reporting. 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.

grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall

be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

### Minority Utilization Goals

Economic Area		Goal (Percent)
174	Redding CA: Non-SMSA Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA CA Monterey 7360 San Francisco-Oakland CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo 7400 San Jose, CA CA Santa Clara, CA 7485 Santa Cruz, CA CA Santa Cruz 7500 Santa Rosa CA Sonoma 8720 Vallejo-Fairfield-Napa, CA CA Napa; CA Solano Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	28.9 25.6 19.6 14.9 9.1 17.1 23.2
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA CA Placer; CA Sacramento; CA Yolo Non-SMSA Counties CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	16.1 14.3
178	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA CA Stanislaus 8120 Stockton, CA CA San Joaquin Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Toulumne	12.3 24.3 19.8

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179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA CA Kern 2840 Fresno, CA CA Fresno Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	19.1  26.1  23.6
180	Los Angeles, CA: SMSA Counties: 0360 Anaheim-Santa Ana-Garden Grove, CA CA Orange 4480 Los Angeles-Long Beach, CA CA Los Angeles 6000 Oxnard-Simi Valley-Ventura, CA CA Ventura 6780 Riverside-San Bernardino-Ontario, CA CA Riverside; CA San Bernardino 7480 Santa Barbara-Santa Maria-Lompoc, CA CA Santa Barbara Non-SMSA Counties CA Inyo; CA Mono; CA San Luis Obispo	11.9  28.3  21.5  19.0  19.7  24.6
181	San Diego, CA: SMSA Counties 7320 San Diego, CA CA San Diego Non-SMSA Counties CA Imperial	16.9  18.2

For each July during which work is performed under the contract, you and each non-material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

## **Training**

This section applies if a number of trainees or apprentices is specified in the special provisions. As part of your equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

You have primary responsibility for meeting this training requirement.

If you subcontract a contract part, determine how many trainees or apprentices are to be trained by the subcontractor.

Include these training requirements in your subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of your needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, submit to the City/County of \_\_\_\_\_:

1. Number of apprentices or trainees to be trained for each classification.
2. Training program to be used.
3. Training starting date for each classification.

Obtain the City/County of \_\_\_\_\_ approval for this submitted information before you start work. The City/County of \_\_\_\_\_ credits you for each apprentice or trainee you employ on the work who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section is to train and upgrade minorities and women toward journeymen status. Make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area. Show that you have made the efforts. In making these efforts, do not discriminate against any applicant for training.

Do not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status, or in which the employee has been employed as a journeyman.
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training.

Ask the employee if the employee has successfully completed a training course leading to journeyman status, or has been employed as a journeyman. Your records must show the employee's answers to the questions.

In your training program, establish the minimum length and training type for each classification. The City/County of \_\_\_\_\_ and FHWA approves a program if one of the following is met:

1. It is calculated to:
  - 1.1. Meet your equal employment opportunity responsibilities.
  - 1.2. Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period.
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training and it is administered in a way consistent with the equal employment responsibilities of federal-aid highway construction contracts.

Obtain the State's approval for your training program before you start work involving the classification covered by the program.

Provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The City/County of \_\_\_\_\_ reimburses you 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training.
2. For off-site training if the apprentice or trainee is currently employed on a federal-aid project and you do at least one of the following:
  - 2.1. Contribute to the cost of the training.
  - 2.2. Provide the instruction to the apprentice or trainee.
  - 2.3. Pay the apprentice's or trainee's wages during the off-site training period.
3. If you comply with this section.

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill.
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification, or until the apprentice or trainee has completed the training program.

Furnish the apprentice or trainee:

1. Copy of the program you will comply with in providing the training.
2. Certification showing the type and length of training satisfactorily completed.

Maintain records and submit reports documenting your performance under this section.

## 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 and the submission of the bid.

The bidder's bond shall conform to the bond form in the Bid book for the project and shall be properly filled out and executed. The bidder's bond form included in that book may be used.

In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit is included in the Bid book. Signing the Bid book 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 Title 49 CFR (Code of Federal Regulations), Part 26 in the award and administration of US 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.

Failure of the bidder to fulfill the requirements of the Special Provisions for submittals required to be furnished after bid opening, including but not limited to escrowed bid documents, where applicable, may subject the bidder to a determination of the bidder's responsibility in the event it is the apparent low bidder on a future public works contracts.

**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 sub-recipient 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 Bid book. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in the Bid book. Signing the Bid book 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 project is subject to Title 49 CFR 26.13(b):

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.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26).

To ensure there is equal participation of the DBE groups specified in 49 CFR 26.5, the Agency specifies a goal for Underutilized Disadvantaged Business Enterprises (UDBEs). UDBE is a firm that meets the definition of DBE and is a member of one of the following groups:

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

References to DBEs include UDBEs, but references to UDBEs do not include all DBEs.

Make work available to UDBEs and select work parts consistent with available UDBE subcontractors and suppliers.

Meet the UDBE goal shown in the Notice to Bidders or demonstrate that you made adequate good faith efforts to meet this goal.

It is your responsibility to verify that the UDBE firm is certified as DBE at date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to:

[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)



Only UDBE participation will count towards the UDBE goal. DBE participation will count towards the Agency's Annual Anticipated DBE Participation Level and the California statewide goal.

Credit for materials or supplies you purchase from UDBEs counts towards the goal in the following manner:

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

You receive credit towards the goal if you employ a UDBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55.

### **UDBE Commitment Submittal**

Submit UDBE information on the "Local Agency Bidder UDBE Commitment (Construction Contracts)," Exhibit 15-G1 form, included in the Bid book. If the form is not submitted with the bid, remove the form from the Bid book before submitting your bid.

If the UDBE Commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the UDBE Commitment form to the Agency. UDBE Commitment form must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders do not need to submit the UDBE Commitment form unless the Agency requests it. If the Agency requests you to submit a UDBE Commitment form, submit the completed form within 4 business days of the request.

Submit written confirmation from each UDBE stating that it is participating in the contract. Include confirmation with the UDBE Commitment form. A copy of a UDBE's quote will serve as written confirmation that the UDBE is participating in the contract.

If you do not submit the UDBE Commitment form within the specified time, the Agency finds your bid nonresponsive.

### **Good Faith Efforts Submittal**

If you have not met the UDBE goal, complete and submit the "UDBE Information - Good Faith Efforts," Exhibit 15-H form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by UDBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

If your UDBE Commitment form shows that you have met the UDBE goal or if you are required to submit the UDBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Agency finds that the UDBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to UDBE firms. Identify those items of work you might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate UDBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to UDBE firms.
2. Names of certified UDBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the UDBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified UDBEs through all reasonable and available means and provide sufficient time to allow UDBEs to respond.
3. Name of selected firm and its status as a UDBE for each item of work made available. Include name, address, and telephone number of each UDBE that provided a quote and their price quote. If the firm selected for the item is not a UDBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested UDBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using UDBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested UDBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the UDBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested UDBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the UDBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the UDBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

### 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.

#### **Bid protests are to be delivered to the following address. (Agency to provide information)**

The award of the contract, if it be awarded, will be to the lowest responsible bidder whose bid complies with all the requirements prescribed.

The contract shall be executed by the successful bidder and shall be returned together with the contract bonds, to the Agency so that it is received within 10 days, not including Saturdays, Sundays and legal holidays, after the bidder has received the contract for execution. Failure to do so shall be just cause for forfeiture of the proposal guaranty. The executed contract documents shall be delivered to the following address: (Agency to provide detailed information if this paragraph is used)

A "Local Agency Bidder DBE Information (Construction Contracts)," Exhibit 15-G2 form is included in the Bid book 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 successful bidder's "Local Agency Bidder DBE Information (Construction Contracts)," Exhibit 15-G2 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 Bidder DBE Information (Construction Contracts)," Exhibit 15-G2 form shall 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 15 calendar days after the contract has been approved by the attorney appointed and authorized to represent the City/County of \_\_\_\_\_.

This work shall be diligently prosecuted to completion before the expiration of \_\_\_\_\_ WORKING DAYS beginning on the 15 calendar day after approval of the contract.

(INSERT AMOUNT OF LIQUIDATED DAMAGES)

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

### **Liquidated Damages**

Liquidated Damages are based on the estimated cost of field construction engineering. In special cases, liquidated damages greater than the estimated field construction engineering cost may be specified, provided detailed reasons are given to support the greater amount. In every case, show the calculations that support the recommended rate. Liquidated damages are not to be used as disincentives to encourage timely completion.

Use the following formula for highway construction projects to avoid excessive liquidated damages:

$$\frac{L\% \text{ (See Table below) } \times \text{Engineer's Estimate} + \text{RE Office Expenses}}{\text{Working Days}} = \text{Liq Dam/calendar day}$$

\* Resident Engineer office expenses over the life of the contract should be added unless the cost is already included in the Engineer's Estimate.

\*\* Working days used to calculate liquidated damages should not include water pollution establishment or plant establishment days.

**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 AC Surfacing, seal coats, slurry seals, and so on.

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

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**Required for ALL construction contracts administered under the Caltrans Standard Specifications**

**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" Form CEM-2402(F) and certified correct by the Contractor or the Contractor's authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within ninety 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).

**5-1. DBE CERTIFICATION STATUS**

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

Upon completion of the contract, "Disadvantaged Business Enterprises (DBE) Certification Status Change" Form CEM-2403(F) indicating the DBE's existing certification status shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Engineer within ninety days from the date of contract acceptance.

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### 5-1. \_\_ PERFORMANCE OF SUBCONTRACTORS

The subcontractors listed by you in Bid book shall list therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of the total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. The bidder's attention is invited to other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

UDBEs must perform work or supply materials as listed in the "Local Agency Bidder UDBE Commitment" form specified under Section 2, "Bidding," of these special provisions. Do not terminate a UDBE listed subcontractor for convenience and perform the work with your own forces or obtain materials from other sources without prior written authorization from the Agency.

The Agency grants authorization to use other forces or sources of materials for requests that show any of the following justifications:

1. Listed UDBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulate a bond is a condition of executing the subcontract and the listed UDBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed UDBE does not have a valid license under Contractors License Law.
4. Listed UDBE fails or refuses to perform the work or furnish the listed materials.
5. Listed UDBE's work is unsatisfactory and not in compliance with the contract.
6. Listed UDBE delays or disrupts the progress of the work.
7. Listed UDBE becomes bankrupt or insolvent.

If a listed UDBE subcontractor is terminated, you must make good faith efforts to find another UDBE subcontractor to substitute for the original UDBE. The substitute UDBE must perform at least the same amount of work as the original UDBE under the contract to the extent needed to meet the UDBE goal.

The substitute UDBE must be certified as a DBE at the time of request for substitution.

The Agency does not pay for work or material unless it is performed or supplied by the listed UDBE, unless the UDBE is terminated in accordance with this section.

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### 5-1. SUBCONTRACTING

No subcontract releases the Contractor from the contract or relieves the Contractor of their responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the City/County of \_\_\_\_\_ may exercise the remedies provided under Pub Cont Code § 4110. The City/County of \_\_\_\_\_ may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

Submit copies of subcontracts upon request by the Engineer.

Before subcontracted work starts, submit a Subcontracting Request form.

Do not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations web site at: <http://www.dir.ca.gov/dlsc/debar.html>

Upon request by the Engineer, immediately remove and not again use a subcontractor who fails to prosecute the work satisfactorily.

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.

### 5-1. PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS

A prime contractor or subcontractor shall pay 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 prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

**5-1.\_ PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS**

The local agency must include one of the following three provisions (if using *Caltrans Standard Specification*, modify or delete paragraphs 9-1.06 and 9-1.065) to ensure prompt and full payment of any retainage from the prime contractor, or subcontractor to a subcontractor.

(EITHER)

No retainage will be withheld by the agency from progress payments due the prime contractor. Retainage by the prime contractor or subcontractors is prohibited and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor, in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance or noncompliance by a subcontractor.

(OR)

No retainage will be held by the agency from progress payments due the prime contractor. Any retainage held by the prime contractors or subcontractors from progress payments due subcontractors shall be promptly paid in full to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor, in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance or noncompliance by a subcontractor.

(OR)

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor, in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance or noncompliance by a subcontractor.

## 5-1. \_\_ FEDERAL REQUIREMENTS (AMERICAN RECOVERY AND REINVESTMENT ACT)

Under the American Recovery and Reinvestment Act (ARRA) of 2009, 9 USC § 902:

### SEC. 902. ACCESS OF GOVERNMENT ACCOUNTABILITY OFFICE.

- (a) ACCESS.—Each contract awarded using funds made available in this Act shall provide that the Comptroller General and his representatives are authorized:
- (1) to examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
  - (2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
- (b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Under ARRA of 2009, 9 USC § 1515(a):

### SEC. 1515. ACCESS OF OFFICES OF INSPECTOR GENERAL TO CERTAIN RECORDS AND EMPLOYEES.

- (a) ACCESS.—With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and
  - (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.
- (b) RELATIONSHIP TO EXISTING AUTHORITY.—Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

Immediately notify the Engineer if you have been contacted by the U.S. Comptroller, Inspector General, or their representatives. Used in projects with ARRA Federal-aid funds.

**Used in projects with American Recovery and Reinvestment Act Federal-aid funds.**

## 5-1. \_\_ MONTHLY EMPLOYMENT REPORT (AMERICAN RECOVERY AND REINVESTMENT ACT)

For the purpose of complying with the American Recovery and Reinvestment Act of 2009, submit a completed Monthly Employment Report form by the fifth of each month for the previous month. For the form, go to: <http://www.dot.ca.gov/hq/construc/forms/cem1204.pdf>

If you fail to submit a complete and accurate report, the Department withholds 2 percent of the monthly progress estimate. The Department does not withhold more than \$10,000 or less than \$1,000. The Department releases the withhold upon submission of the completed form.

Used in projects with American Recovery and Reinvestment Act Federal-aid funds

### 3-1.02 DATA UNIVERSAL NUMBERING SYSTEM (D-U-N-S) NUMBER

For the purpose of complying with the American Recovery and Reinvestment Act of 2009, the successful bidder must provide the Department a D-U-N-S number.

Complete and sign the Data Universal Numbering System (D-U-N-S) Number form included in the contract documents. This form must be submitted with the executed contract.

If your company does not have a D-U-N-S number, you can obtain one by contacting Dun & Bradstreet at:

<http://dnb.com/us/>

If you fail to submit this information with the executed contract, the City/County of \_\_\_\_\_ will not approve the contract.

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# CHAPTER 13 RIGHT OF WAY

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## CHAPTER 13 RIGHT OF WAY

### 13.1 GENERAL

“Right of Way” refers to the real property rights, which local agencies must possess to construct local assistance transportation projects utilizing federal funds. The provisions of this chapter apply to all local assistance projects involving federal funds **off** the State Highway System (SHS), whether or not these funds are expended for purchase of real property rights. When local agency projects are performed on the SHS or any portion thereof, the local public agency must follow the Caltrans Manuals that apply to the work being done, among them, the *Right of Way Manual* and the *Cooperative Agreement Manual*.

The *Right of Way Manual* is used for projects on the SHS, either conventional highways or expressways and freeways. The Manual has approximately 575 forms and exhibits that are extremely useful and necessary to perform all of the various right of way functions. These forms and exhibits, as well as 17 chapters of right of way processes and procedures are available to all local public agencies for use in performing their right of way work. Caltrans projects may generally be larger than many local agency projects, but the right of way processes and procedures are the same as those performed by local agencies for their projects.

Local public agencies are encouraged to access the Caltrans Right of Way Manual web site at: <http://www.dot.ca.gov/hq/row/>.

The authority to acquire property for a public project is found in the US Constitution and the Bill of Rights and the processes to exercise this authority are contained in federal law. Under federal laws and regulations that apply whenever federal funds are used for a project, affected property owners and those displaced by the project, are entitled to be treated in ways that provide the due process of law and which ensure they are justly compensated for losses they experience. These laws and regulations are also intended as a safeguard to ensure that federal funds are not unnecessarily or inappropriately expended.

The information in this section has been compiled from many sources, but the underlying federal and state laws remain unchanged. This chapter should not be used as a substitute for these laws, statutes, regulations policies, and/or procedures when conducting right of way activities using federal funds.

Note: All documents and papers related to a project must carry the federal-aid project number for identification.

### 13.2 FEDERAL-AID AND THE FEDERAL/STATE/LOCAL AGENCY RELATIONSHIP

The Federal Highway Administration (FHWA) is the federal agency most typically involved in transportation projects undertaken with federal funding for the programs discussed in this manual. It has the authority and responsibility for implementing and monitoring federal laws, regulations and executive orders affecting these programs. When a project utilizes federal funding, the FHWA is involved pursuant to these responsibilities and the delegations described below.

Caltrans has obtained major delegations of authority from FHWA under the provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) that superseded the Transportation Equity Act of the 21<sup>st</sup> Century (TEA-21), and previous Transportation Acts. Further, it has passed on these delegations to local agency partners to the greatest extent possible. With each delegation goes the responsibility for initiating and completing each project phase in accordance with the appropriate state and federal laws and regulations without extensive FHWA or State Oversight.

ISTEA established provisions for Congress to adopt a National Highway System (NHS) of 155,000 miles of major roads in the United States. This system was established to provide an interconnected system of principle arterials, which serve major populated centers, international border crossings, ports, airports, public transportation facilities, and which meets national defense requirements as well as serving interstate travel. Until Congress made its official adoption, the NHS was defined as all principal arterials, including the Interstate System.

On November 28, 1995, the President signed the legislation defining the NHS. The system includes all interstate routes, a selection of urban and rural principal arterials, the defense strategic highway network and strategic highway connectors.

In California, about 180 miles of local agency principal arterials were selected to be a part of the NHS. Some procedures in this manual for projects on the NHS are different from those for projects not on the NHS (non-NHS). One of the early local agency determinations should be whether the project is on the NHS.

## FHWA ROLE

For all federal-aid projects FHWA is responsible for the following project activities:

- Obligation of federal funds
- Approval of E-76 for Right of Way activities and utilities under the Alternate Procedure
- Execution of Project Agreements
- Acceptance of Right of Way Certification for projects on the NHS where total project costs exceed \$1 million

The intent of this chapter is to provide local agencies with the basic understanding of Right of Way procedures for locally sponsored federal-aid transportation projects. Local agencies, which will be actively involved in right of way acquisition and relocation, must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended in 1987 (the Uniform Act). This law can be found in Chapter 10 of the Caltrans *Right of Way Manual*, the FHWA *Project Development Guide* (see Appendices A and B) and at Section 49 of the Code of Federal Regulations (CFR), Part 24.

Note: The Uniform Act must be followed on all local agency projects even if no federal funds are used for the acquisition of right of way for the project. Although, substantial responsibility for the administration of local agency projects has been delegated to Caltrans (see below, “Caltrans Role”), FHWA has retained the overall responsibility for compliance with the Uniform Act. Towards this end, FHWA periodically performs Process Reviews of local agency projects to ensure that the Uniform Act requirements are being met.

In addition, local agencies must also comply with all requirements of Title VI of the 1964 Civil Rights Act on federal-aid projects. This is to ensure that all services and/or benefits derived from any right of way activity will be administered without regard to race, color, gender, or national origin (see FHWA Project Development Guide, Appendix C-12). For additional details on the FHWA/Caltrans relationship, refer to Chapter 2, “Roles and Responsibilities,” of the *Local Assistance Procedures Manual* (LAPM).

#### **CALTRANS ROLE**

When federal funding is used in any phase of a local assistance project, the FHWA places overall responsibility for the acquisition of right of way and the relocation of individuals, businesses, and utilities with Caltrans. Caltrans in turn has delegated substantial authority to local agencies. On these federal-aid projects, all right of way activities must be conducted in accordance with the *Caltrans Right of Way Manual*.

When the project requires the relocation of utility facilities, Caltrans is responsible for approval of the “FHWA Specific Authorization to Relocate Utilities” and “FHWA Approval of Utility Agreement.” More information is available in Chapter 14 “Utility Relocations,” of the LAPM. These Agreement forms are both part of form RW 13-15 found in Chapter 13, “*Caltrans Right of Way Manual*.”

Caltrans is responsible for fully informing local agencies of their responsibilities accompanying federal-aid transportation projects by ensuring that every local agency receives all current regulations and procedural instructions affecting right of way activity, and on request will provide training, guidance and advice on right of way matters. Further information is provided in the *Caltrans Right of Way Manual*. FHWA’s *Project Development Guide* and *Caltrans Right of Way Manual* are available to each local agency. Refer to Flow chart 13-1, “Flowchart of Right of Way Procedures,” which gives an excellent overview of the Right of Way process.

#### **CALTRANS DISTRICT ROLES**

When questions arise in the development of a federal-aid project, or if it is determined that property rights will be required on the project, the local Caltrans District Local Assistance Engineer (DLAE) should be promptly notified. The DLAE has overall responsibility as liaison with each local agency in that district. In addition, each district has a Right of Way Local Programs Coordinator who is responsible for working with each local agency whose projects involve federal funds.

As part of the overall responsibility assigned to Caltrans by FHWA, Caltrans Right of Way is required to monitor local agency’s procedures for right of way appraisal, acquisition, relocation assistance, property management, and utility relocations on all local assistance projects for compliance with applicable state and federal laws and regulations.

#### **THE MONITORING PROCESS**

The Caltrans District Right of Way Local Programs Coordinator will monitor right of way activities at any time during the project. Normally, however, most monitoring is performed on a post-audit, spot-check basis to ensure that such activities are performed in compliance with state and federal laws and regulations. Acquisition and relocation activities must be in conformance with the Uniform Act, Federal Stewardship requirements, the FHWA *Project Development Guide*, and the *Caltrans Right of Way Manual*. All right of way functional areas are subject to review. Spot-check monitoring will normally be limited to no more than 25% of the total work performed. Additional

reviews shall be made only when violations are discovered and then only to determine if the violations are prevalent or one-time occurrences (see below, “Monitoring Findings”).

The reviewer shall bring all violations discovered to the attention of the local agency. It is the local agency’s responsibility to ensure correction. The selection of projects that will be monitored shall be at the discretion of the district based on staff availability, familiarity with the local agency, the project and consultants which may be used, as well as the complexity of the right of way issues.

Monitoring will usually use checklists or outlines to guide the review. Both entry and exit conferences will be conducted to advise local agency staff of the scope and findings of the monitoring visit. A written report will usually be provided to the local agency, **THOUGH NOT NECESSARILY AT THE TIME OF THE EXIT CONFERENCE.**

## **MONITORING FINDINGS**

Ideally, the monitoring review will discover compliance with all applicable laws and regulations. Occasionally, however, there may be other results with findings having different levels of seriousness.

### **Violations of What Caltrans Considers to be Good Business Practice**

These are practices of the local agency, which could be improved with the result being a more efficient or effective operation and/or reduced chance that more serious violations will occur subsequently. Local agencies will be advised of these observations, but there is no penalty associated with noncompliance. Local agencies are free to adopt suggested changes or not as their management judgment indicates.

### **Violations of Practices Where Correction is Mandatory**

Local agencies will be expected to change their practices to conform to Caltrans’ requirements. For qualified agencies, failure to do so may jeopardize their qualification status for future projects. In addition, serious violations of this nature must be corrected, particularly when it appears that a violation of property owner’s rights is involved. Local agencies will be advised in writing of such violations and of the corrective actions to be taken. During the time the local agency is taking the corrective actions, federal reimbursement may be withheld. Failure to complete the corrective actions within reasonable time periods may result in withdrawal of federal funding for the project.

For additional details, refer to Chapter 20, “Deficiencies and Sanctions” of the LAPM.

## **QUALIFYING LOCAL AGENCIES**

Caltrans qualifies local agencies to perform their own right of way functions (see below, “Qualification of Local Agencies”). Caltrans also provides training and guidance to local agencies seeking assistance on federal-aid projects.

## **LOCAL AGENCY ROLE**

### **CERTIFICATION OF PROJECTS**

The local agency will certify that all Uniform Act requirements have been met on federal-aid projects.

### **QUALIFICATION OF LOCAL AGENCIES**

Caltrans has an agreement with FHWA that allows local agencies to be certified in advance to perform all or some right of way activities based on the local agency’s



qualifications, the size of their staff and their ability to perform the technical work, and subsequent reviews. Caltrans District Right of Way staff conducts a qualification review to determine if the local agency is adequately staffed, organized, and has the necessary expertise to perform right of way work properly and timely. The agency must agree to conform to Department's policies and procedures in order to meet state and federal requirements. The review is necessary before the local agency can begin right of way work on a federal-aid project.

To become qualified, the local agency must first contact the **District Right of Way Local Programs Coordinator**, requesting approval of qualification status. The Coordinator will then meet with the local agency's Right of Way/Real Property Department to explain state and federal requirements and what must be done to become qualified. The Coordinator will request copies of organizational charts, staff resumes and duty statements, and will see that the agency has all needed material: the Caltrans *Right of Way Manual*, any necessary policy and procedure memo, and current copies of Titles 23 and 49 of the Code of Federal Regulations. The manuals shall be in sufficient detail to adequately describe operational procedures for the functional areas to be certified so as to provide adequate instructions to Right of Way/Real Property employees on how to perform their assigned duties.

#### QUALIFICATION LEVELS

The local agency may have experienced staff but not in sufficient number to be qualified for every right of way function. The following levels of qualification can be obtained with prior Department's Region/District approval:

- Level 1:** Staff is qualified to do technical work in one or more specific functional areas. These areas will be shown in the qualification approval. As an example, some smaller rural agencies have sought approval to perform only appraisal or acquisition functions.
- Level 2:** Staff is qualified to do technical work in more than one functional area, but not in all. There is sufficient staff available to perform these functions on more than one project at a time.
- Level 3:** Staff is large enough and qualified to do technical work in all functional areas.

#### QUALIFICATION TERM

**Level 1, 2 & 3** approvals are good for three years and require a review at the end of that time.

Please see the Local Programs Chapter 17, "*Caltrans Right of Way Manual*" for additional information on Local Agency Qualifications.

#### CALTRANS AUDITS OFFICE

Caltrans Audits and Investigations Office will help evaluate a local agency before the agency is approved for qualification. This audit evaluation will determine if the local agency's cost accumulation, accounting procedures and billing processes are compatible with Caltrans's fiscal system, and ensure an awareness of federal reimbursement requirements where necessary. Follow-up reviews will be made necessary to ensure compliance is maintained. When District Right of Way Local Programs Coordinator receives a request from a local agency for prequalification, the Coordinator should notify the Division of Right of Way Local Programs Branch in writing and request Audits and

Investigations Office to perform the audit evaluation. the Division of Right of Way Local Programs Branch in writing and request Audits and Investigations Office to perform the audit evaluation.

#### **WITHDRAWAL OF QUALIFICATION**

It is important to note that the qualification status can be withdrawn if deficiencies are found and not corrected, or if the staffing and experience levels change, so that the local agency can no longer meet the minimum requirements. At the time each agency is notified of its qualification level, the agency is told to inform Caltrans if there are any major personnel changes, which would impact its ability to perform the respective right of way functions.

#### **APPRAISAL REVIEW QUALIFICATION**

On federal-aid projects, a formal review of the appraisal is necessary in order to establish the Fair Market Value for the property (see 49 CFR 24.104). A consultant review appraiser must have a valid general license issued by the State Office of Real Estate Appraisers (OREA). The review appraiser must determine that the appraisal meets applicable appraisal requirements and shall prior to acceptance, seek necessary corrections or revisions. If the review appraiser is unable to approve or recommend approval of the appraisal, the reviewer may develop additional documentation in accordance with Sec. 24.103 to support an approved or recommended value. The reviewer must state the basis for the value conclusion.

If the local agency receives a qualification status, Level 1 or 2 without having the staff or means to perform the appraisal review function, the local agency shall hire either a qualified licensed consultant (see below, "Local Agency Selection of Consultants"), **or** another local agency qualified to perform the appraisal review function. Note: Only the local agency can determine the just compensation to be paid. Another agency or consultant cannot do so.

#### **NON-QUALIFIED LOCAL AGENCIES--OPTIONS**

Local agencies that are not qualified to perform any or all of the respective right of way functions necessary for the project must either hire another local agency which is qualified to perform those functions, or directly hire a consultant(s) who meets the consultant selection criteria discussed below.

In summary, non-qualified local agencies have the following choices in hiring consultants:

- Contract with a qualified local agency.
- Contract with a private consultant(s) to perform one or more right of way specialties: Appraisals, Appraisal Review Acquisitions, Relocation Assistance, etc.
- Contract with a Right of Way Project Management consultant.
- Utilize a mixture of local agency staff and the resources available as mentioned in the first two items above.
- Contract with a "Turnkey" consultant who can perform all Right of Way functions.

**Note:** It is the local agency's responsibility to verify that the consultants have the necessary Certificates/Licenses to perform the right of way functions needed for the local agency's project.

notice of the hearing. If the owner(s) believe that their property should not be required, they have the right to appear at the hearing and contest the adoption of the Resolution of Necessity.

Great care must be taken in the exercise of the power of eminent domain. The process is discussed in detail in Chapter 9 of the Caltrans *Right of Way Manual*.

## RELOCATION ASSISTANCE

The Uniform Act also contains basic requirements when displacement occurs as a result of the transportation project. These requirements are found at 49 CFR 24 Subparts C, D and E. The relocation procedures are also discussed in detail in Chapter 10, "Relocation Assistance," of the Caltrans *Right of Way Manual*.

The purpose of the Uniform Act is to assure fair and equitable treatment of displaced persons, so that such persons do not suffer disproportionate injury from projects designed to benefit the public as a whole. It is important to understand that successful relocation is essential not only to those displaced but also to the progress of the entire highway project.

While the local agency needs information about any displacement, which will occur because of the project, the displaced persons have an equal or greater need for information about the benefits, the eligibility requirements to obtain these benefits, and the appeal process in the events these benefits are denied. FHWA has prepared a broadly written brochure entitled "*Your Rights and Benefits as a Displaced Person*." The brochure explains these matters and is intended to be used by relocation agents and at public hearings. Copies are available from the Caltrans District Right of Way Coordinator. In addition, FHWA has also prepared a more specific explanation of these benefits and the requirements to obtain them. This summary should minimize any disruption caused by the move and maximize the likelihood of a successful relocation. A copy of this summary is provided as Exhibit 13-D, "Uniform Relocation Act Benefits Summary," in this chapter.

## GENERAL REQUIREMENTS

The relocation agents and any private sector consultants should meet the selection criteria found in the "Consultant Selection Criteria," Exhibit 13-C in this chapter.

The relocation activities should be coordinated with both the appraisal and acquisition functions.

It is crucial to ensure that:

- Timely calls are made.
- Proper entitlements and advisory services are provided.
- Relocation Assistance Program (RAP) payments are timely and properly calculated.
- The appeal process is communicated to the displacees.
- Diaries are maintained.
- All notices (Eligibility, Vacate, Entitlement, etc.) are timely.

## PROPERTY MANAGEMENT

Property management includes the administration of property acquired for transportation projects, so that the public interest is best served. FHWA regulations for the property management function are found in 23 CFR 710. These policies and procedures apply to

all real property acquired by local agencies in connection with projects where federal funds participate in any of the right of way costs for the project. Federal funds may be used to cover the net costs incurred in leasing, rental, maintenance, disposal of improvements, and the clearance of the property. For additional details, refer to Chapter 11, "Property Management," of the Caltrans *Right of Way Manual*.

The management and administration of acquired property includes:

- An inventory of all improvements acquired as part of the right of way.
- An accounting of the property management expenses and the rental payments received.
- An accounting of the disposition of improvements and the salvage payments received.

#### SPECIAL REQUIREMENTS

**If a private consultant provides property management services, the firm must have a valid California Real Estate Broker's license and a minimum of two (2) years experience at the working level in management of rental properties.**

See Chapter 17, Exhibit 17- EX 13, "Consultant Selection Criteria and Guide." of the Caltrans *Right of Way Manual*.

Former owners and tenants subject to termination by the local agency on short notice will not be charged more than fair market rents.

#### EXCESS LANDS (ACQUISITION AND DISPOSAL)

The regulations covering acquisition and disposal of Excess Lands are found in 23 CFR 710 and 771. FHWA no longer requires reimbursement of the federal share of proceeds from the sale of excess real property. Local agencies shall use these funds for subsequent Title 23 (US Code) eligible projects. Local agencies may consider creating a dedicated Title 23 (highway) account where proceeds from the sale of excess will be deposited and only used for Title 23 projects. See 23 CFR 710.403(e).

### 13.10 RIGHT OF WAY CERTIFICATION

When a local agency performs right of way activities on a federally assisted local project, the local agency prepares the Right of Way Certification. The Right of Way Certification is necessary before a project can proceed to construction. The purpose of the Right of Way Certification is to document that any interests necessary for the project have been, or are being secured, and physical obstructions including buildings, utilities and railroads have been, or will be removed, relocated or protected as required for construction, operation and maintenance of the proposed project. The Right of Way Certification also documents that right of way activities including the relocation of any displacees were conducted in accordance with applicable state and federal laws and regulations.

#### CERTIFICATION FORMS

A separate Right of Way Certification must be completed by local agencies for each local assistance project even if no right of way is required for the project. All Certifications can be prepared using forms specified by Caltrans (see Exhibits 13-A and 13-B in this chapter or in CD format, which can be purchased from Caltrans Publication Distribution Unit).

On the Right of Way Certification Form, the local agency should use only the portions applicable to the project being certified. The No Right of Way Certification should be completed in its entirety.

### **PROJECT CERTIFICATION---NO ADDITIONAL RIGHT OF WAY REQUIRED**

If it is evident during the early stages that no additional property rights or right of way are required, and no utility facilities will be adjusted/relocated, even if they are owned and operated by the sponsoring local public agency, the local agency can then proceed with the next stage in the project development procedure, which is certifying to Caltrans that no right of way is required. This is accomplished with a “No Right of Way Certification,” Exhibit 13-A in this chapter, which is completed in duplicate, signed by an authorized official or a designated alternate from the local agency and forwarded to the DLAE for acceptance.

It is important to remind local agencies that only authorized officials may execute Certifications. Section 17.08.14.11 of Chapter 17 of the Caltrans *Right of Way Manual*, states in part that the Local Public Agency “...may adopt a resolution giving (a responsible agency official) blanket authority to execute Right of Way Certifications.” This is intended to streamline the process and avoid the necessity to have the execution of each individual Certification authorized by an agency resolution. If the continuing resolution of authority option is chosen, each Certification should be accompanied by a statement from the Local Public Agency that the Certification has been executed by an official or designated alternate pursuant to a resolution authorizing this official to do so. It will be sufficient to have a copy of the original resolution on file in the District Right of Way Office.

**Note: All questions on the No Right of Way Certification should be answered “NO.” If any questions are answered “YES,” the use of the form is inappropriate, and the form should be returned to the local agency with instructions to use the longer Right of Way Certification Form which is intended for use in dealing with right of way matters.**

### **ACCEPTANCE OF THE NO RIGHT OF WAY CERTIFICATION**

The DLAE will review the No Right of Way Certification Form. If no additional property rights are required, the local agency has answered “NO” to all the questions, and the form is otherwise correctly completed, the DLAE will accept the Certification on behalf of Caltrans, and one of the signed duplicate originals will be returned to the local agency and a copy of the Certification will be sent to the Right of Way Local Programs Coordinator for District Right of Way files.

### **UTILITY RELOCATION**

Local agency transportation projects often involve utility relocation. For utility relocation details refer to Chapter 14, “Utility Relocations,” of this Manual.

**Note:** If there are any utility facilities that require adjustment/relocation, even if they are owned and operated by the sponsoring local public agency, the “NO Right of Way Certification” form must not be used to certify the project.

## PROJECT CERTIFICATION—RIGHT OF WAY REQUIRED

When additional property rights are required for a local federal-aid project, it is necessary for the agency to certify that these rights were acquired in conformance with the Uniform Act.

All local agencies will certify their own projects, but it is of crucial importance to adhere to the Code of Federal Regulations and the Caltrans *Right of Way Manual* that incorporate these federal regulations, so that any state or federal funds to be used for the project are not jeopardized. This emphasizes the gravity for non-qualified local agencies in the selection of qualified consultants or in contracting with a qualified local agency to perform the respective right of way functions for them.

### LEVELS OF CERTIFICATION

There are four levels of Right of Way Certification, which are discussed below.

#### Certification No. 1

The certification documents the following:

- All the work is within existing right of way acquired for a previous construction project and all new work will be within that existing right of way,

OR

- Acquisitions are complete (escrow's closed and/or Final Orders of Condemnation recorded),

AND/OR

- There are effective Orders for Possession on all remaining unacquired parcels,

AND

- All occupants have vacated the lands and improvements,
- Relocation Assistance and payment requirements have been met,
- All necessary material and/or disposal sites have been secured,

AND

- All rights of way clearance, utility, and railroad work has been completed, or all necessary arrangements have been made (Utility Notices issued, demolition contracts awarded, railroad contracts executed) for the work to be undertaken and completed as required for proper coordination with the physical construction schedules.

#### Certification No. 2

This level of Certification documents the following:

- All the requirements for Right of Way Certification No. 2 are the same as for Certification No. 1, except that one or more parcels are in the agency's possession by virtue of effective Rights of Entry or an Agreement for Possession and Use. Similar documents such as a permit, license, or an approved Right of Way Contract with an effective right of possession date, also require the use of a Certification No. 2. (See limitations on use of "Rights of Entry" contained in Section 13.12 in this chapter).

**EXHIBIT 13-A No Right of Way Certification Local Assistance Project (Off State Highway System)****NO RIGHT OF WAY CERTIFICATION  
LOCAL ASSISTANCE PROJECT  
(OFF STATE HIGHWAY SYSTEM)**

(Date Prepared) \_\_\_\_\_

CITY OF \_\_\_\_\_

(OR)

COUNTY OF \_\_\_\_\_

## Please Note:

This form is intended for use on local assistance projects **off** the State Highway System where federal funds are used and where no additional right of way or rights in real property are required and no utility relocations of any kind are required.

If any of the questions below are answered "Yes," this form should not be used. Instead, the Right of Way Certification Form (Exhibit 13-B) should be utilized.

 PROJECT: \_\_\_\_\_  
 Federal Program (if available)

 \_\_\_\_\_  
 Project Location

 \_\_\_\_\_  
 General Description
**YES****NO****STATUS OF REQUIRED RIGHT OF WAY**

- |                          |                          |    |  |
|--------------------------|--------------------------|----|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. | Is additional right of way required?                                   |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. | Is any work proposed by this project outside of existing right of way? |

**STATUS OF AFFECTED RAILROAD OPERATING FACILITIES**

- |                          |                          |    |   |
|--------------------------|--------------------------|----|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 3. | Are any railroad operating facilities affected by this project? |
|--------------------------|--------------------------|----|---|

**MATERIAL SITE(S)**

- |                          |                          |    |   |
|--------------------------|--------------------------|----|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 4. | Are material sites required for this project? |
|--------------------------|--------------------------|----|---|

**DISPOSAL SITE(S)**

- |                          |                          |    |  |
|--------------------------|--------------------------|----|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 5. | Are disposal sites that are not part of the contractor's responsibility to remove excess material required for this project? |
|--------------------------|--------------------------|----|--|

**STATUS OF REQUIRED UTILITY RELOCATIONS**

- |                          |                          |    |  |
|--------------------------|--------------------------|----|--|
| <input type="checkbox"/> | <input type="checkbox"/> | 6. | Is there an adjustment/relocation of any utility facility, including those owned and operated by the sponsoring local public agency? |
|--------------------------|--------------------------|----|--|

**RIGHT OF WAY CLEARANCE**

- |                          |                          |    |   |
|--------------------------|--------------------------|----|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 7. | Are there improvements or obstructions located within the limits of this project? |
|--------------------------|--------------------------|----|---|

**COMPLIANCE WITH RELOCATION ASSISTANCE PROGRAM REQUIREMENTS**

- |                          |                          |    |   |
|--------------------------|--------------------------|----|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 8. | Are there displacements for this project? |
|--------------------------|--------------------------|----|---|

**ENVIRONMENTAL MITIGATION**

[ ] [ ] 9 Are environmental mitigation parcels required for this project?

**CERTIFICATION**

I hereby certify the right of way on this project as conforming to 23 CFR 635.309(G), which states in part; "The acquisition of right of way is not required for this project." The project may be advertised with the contract award being made at any time.

I understand Caltrans will not be performing a review of the PS&E at this time but that all documents relating to this project are subject to review by FHWA and/or Caltrans in order to verify this certification. I also understand that if deficiencies are found in any subsequent review, the following actions will be considered:

1. Where minor deficiencies are found, the certification for future projects may be conditional or not accepted until the deficiencies are corrected.
2. Where deficiencies are of such magnitude as to create doubt that the policies and objectives of Title 23 of the Code of Federal Regulations (or other applicable federal and state laws) will not be accomplished by the project, federal funding may be withdrawn.

**LOCAL AGENCY CERTIFICATION**

CITY OF \_\_\_\_\_

(OR)

COUNTY OF \_\_\_\_\_

By: \_\_\_\_\_  
(Person must be authorized to sign certification for local public agency)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CALTRANS ACCEPTANCE**

I have not personally inspected the subject project nor reviewed the PS&E package but I am aware of the scope of the project. I have reviewed the above "No Right of Way Certification" and I am satisfied with the form and content. Caltrans accepts this certification as proper in form and apparently complete in content. Caltrans also accepts this certification with the understanding that the local agency statement of compliance (above) has not been confirmed by Caltrans.

By: \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

**Distribution:** 1) Local agency completes this form, signs and sends it to the DLAE for acceptance (signature)  
2) DLAE sends a copy to District Right of Way LP Coordinator, keeps a copy for his/her files, and sends the signed original back to the local agency.



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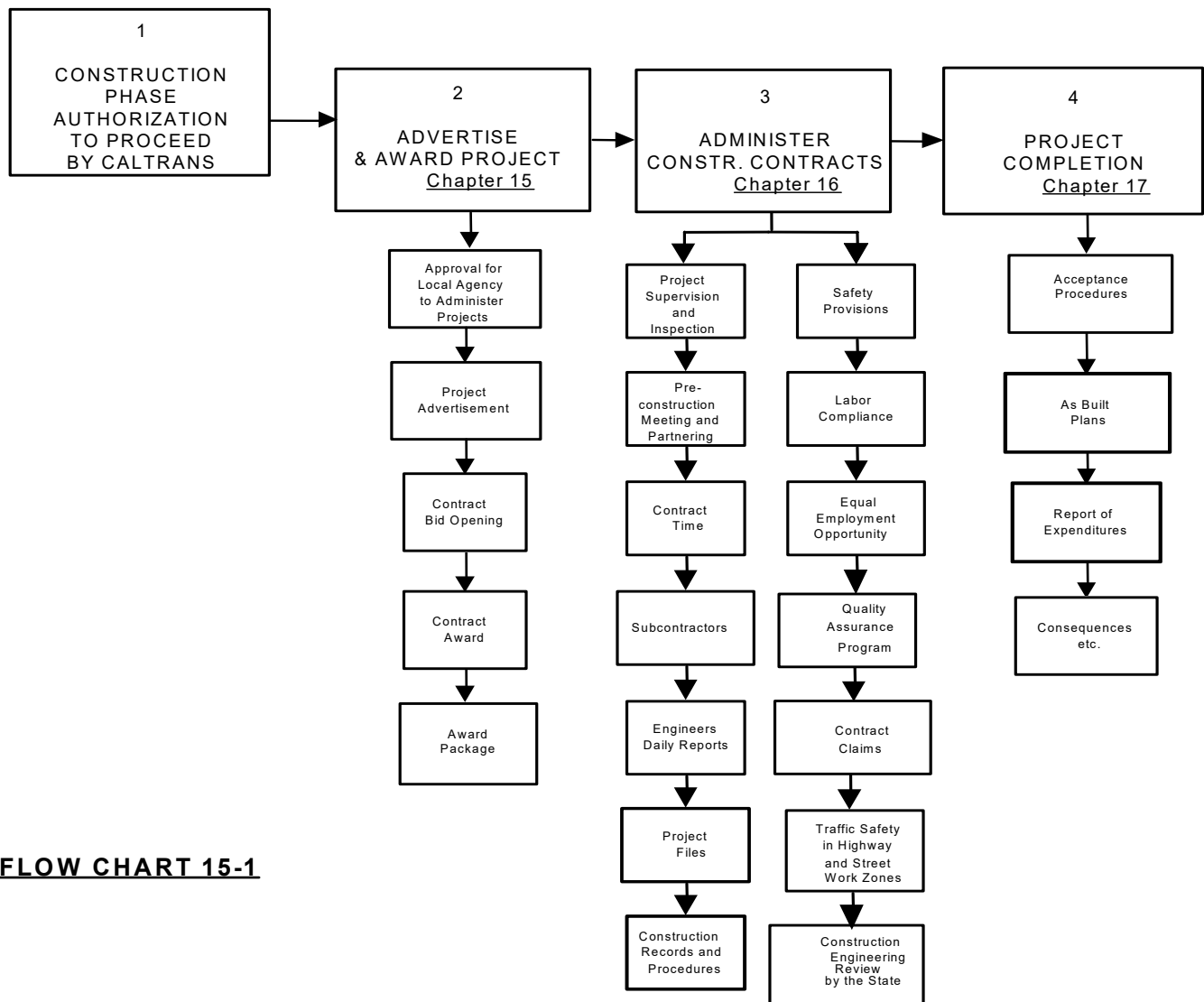
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## CHAPTER 15 ADVERTISE AND AWARD PROJECT

### 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 ACRONYMS

- AASHTO - American Association of State Highway and Transportation Officials
- AC - Advance Construction
- 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 advertising<sup>1</sup> 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. 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 (or lawfully admitted permanent residents) 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 (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka), Women, or any other group found

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

to be socially and economically disadvantaged by the Small Business Administration (see 49 CFR, Part 26)

- Department of Transportation - The Department of Transportation of the State of California, as created by law, also referred to as Department, State, or Caltrans.
- 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
- ER - 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.
- FSTIP - Federal Statewide Transportation Improvement Program
- HPMS - Highway Performance Monitoring System
- Headquarters - The Headquarters office of the Department located at 1120 "N" St., Sacramento, CA 95814.
- 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").
- ISTEA - Intermodal Surface Transportation Efficiency Act of 1991. ISTEA was an Act signed by the President on December 18, 1991, providing authorization for six (6) years for highways, highway safety, and mass transportation. ISTEA was superseded by TEA-21 in 1998 and by SAFETEA-LU in 2005.
- 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 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.
- 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 NEPA document.
- PS&E - Plans, Specifications & Estimate
- Prequalification - The AASHTO defines prequalification as a means of predetermining job experience and work capacity and to identify individuals and organizations from which the agency may accept a bid. The AASHTO also has encouraged the use of prequalification procedures in its *1981 Suggested Guidelines for Strengthening Bidding and Contract Procedures*.
- RAP - Relocation Assistance Program
- 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.
- 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.
- 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)
- SAFETEA-LU - Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users signed into law by President George W. Bush on August 10, 2005, with guaranteed funding for highways, highway safety, and public transportation totaling \$244.1 billion. SAFETEA-LU represents the largest surface transportation investment to date. SAFETEA-LU was built on the foundation established by the two preceding Federal Transportation Acts: ISTEA and TEA-21.

- 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 exercise 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”).
- 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.
- TEA-21 - Transportation Equity Act for the 21<sup>st</sup> Century. Enacted on June 9, 1998, which authorized the federal surface programs for highways, highway safety, and transit for the six year period 1998-2003.
- UDBE -Underutilized Disadvantaged Business Enterprise. A firm meeting the definition of a DBE as specified in 49 CFR, Part 26 and is one of the following groups: Black American, Asian-Pacific American, Native America, or Women.

## 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
- Failure to commit to the achievement of the UDBE contract goals or demonstrate good faith efforts to do so
- Inclusion of conditions or qualifications not provided for in the specifications
- Submission of a materially unbalanced bid

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

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

- Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1)
- Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2)
- A list of bidders and total amounts bid with an item-by-item breakdown (see Exhibit 15-D, "Bid Tabulation Summary Sheet [Sample]") 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 Data" for all NHS projects (see Exhibit 15-E) (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 bids submitted include a completed addenda certification statement. The addenda certification statement is as follows:

*ADDENDA - This bid is submitted with respect to the changes to the contract included in addendum number/s\_ (Fill in number/s if addenda have been received.)*

*Warning - If an addendum or addenda have been issued by the administering agency and not noted above as being received by the bidder, this Bid may be rejected.*

## 15.6 CONTRACT AWARD

### INTRODUCTION

#### WARNING:

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

The contract award is a critical milestone for all federal-aid projects. At this point, the administering agency must have a complete financial package assuring adequate funding for the project. The administering agency shall award federal-aid contracts on the basis of the lowest responsive and responsible bidder. It is the administering agency's responsibility to assure that all successful bidders are licensed contractors upon award of any contract incorporating State or federal-aid funds.

### BID ANALYSIS PROCESS

The administering agency should conduct a **bid analysis** for each project. The bid analysis is required for projects on the National Highway System. The bid analysis is the process performed to justify the award or rejection of the bids and should assure that good competition and the lowest possible cost were received. A proper bid analysis better ensures that funds are being used in the most effective manner. A bid analysis also assists the agency in preparing accurate engineering estimates on future projects.

The bid analysis process is an examination of the unit bid prices for reasonable conformance with the engineer's estimated prices. Beyond the comparison of prices, other factors that a bid analysis may consider include:

- Number of bids
- Distribution or range of the bids
- Identity and geographic location of the bidders
- Urgency of the project
- Unbalancing of bids
- Current market conditions and workloads
- Potential for savings if the project is re-advertised
- Comparison of bid prices with similar projects in the letting
- Justification for significant bid price differences
- Other factors as warranted

The *Contract Cost Data* publication by Caltrans is available to assist local agencies in preparing accurate engineers estimates. This annual publication is available in electronic form on the Internet. Instructions for downloading this information are located at: [http://www.dot.ca.gov/hq/esc/oe/awards/#item\\_code](http://www.dot.ca.gov/hq/esc/oe/awards/#item_code).

Not all of the factors above need to be considered for bids that indicate reasonable prices or show good competition. However, when the low bid exceeds the engineer's estimate by an unreasonable amount, a more thorough analysis should be undertaken to determine if the bids should be rejected or a justification for award of the contract can be made. In order to justify award of a contract under these circumstances, the following criteria should be examined:

- Was competition good?
- Is the project essential and deferral would be contrary to public interest?
- Would re-advertisement result in higher bids?
- Is there an error in the engineer's estimate?
- Is the increase within the amount programmed in the FTIP?

For NHS projects, written justification shall be included in the project file for projects where the lowest responsible bidder exceeds the engineer's estimate by 10% or more. The justification should explain the reasons for the difference between the engineer's estimate and bid amount, and why it was decided to award the contract.

Regarding the adequacy of competition, the FHWA "*Guidelines on Preparing Engineer's Estimate, Bid Reviews and Evaluation*" outlines recommended procedures for preparing engineer's estimates and or reviewing bids prior to award. The web site is at <http://www.fhwa.dot.gov/programadmin/contracts/ta508046.cfm>. Location and availability of bidders should also be considered when determining adequacy of competition. Some projects may be so essential that deferral, even for 60 days, would not be in the public's interest. Examples of such projects might include:

- Safety projects to correct an extremely hazardous condition where the traveling public is in danger.
- Emergency repairs or replacement of damaged facilities.
- Projects to close substantial gaps in otherwise completed facilities to allow opening to traffic.
- Projects that are critical to staged or phased construction and delay would significantly impact the completion of the whole project.

Unbalanced bids are one of the factors to review in a bid analysis. The two types of unbalanced bids are as follows:

- A mathematically unbalanced bid is a bid that contains lump sum or unit bid items that do not reasonably reflect the actual costs (plus reasonable profit, overhead costs, and other indirect costs) to construct the item, and
- A materially unbalanced bid is a bid that generates reasonable doubt that award to that bidder would result in the lowest ultimate cost to the government.

- (1) The amount representing the payments made under the original contract plus payments made under the new contract, or
  - (2) The amount representing what the cost would have been if the construction had been completed as contemplated by the plans and specifications under the original contract.
- (e) If the surety awards a contract for completion of a defaulted federal-aid contract, or completes it by some other acceptable means, the FHWA considers the terms of the original contract in effect and that the work be completed in accordance with the approved plans and specifications included therein. No further FHWA approval or concurrence action is therefore needed in connection with any defaulted federal-aid contract awarded by a surety. Under this procedure, the construction amount eligible for federal participation on the project should not exceed the amount representing what the cost would have been, if the construction had been completed as contemplated by the plans and specifications under the original contract.

## 15.7 AWARD PACKAGE

The administering agency shall complete and forward the following information as **one** package to the DLAE immediately after award of the contract and prior to submitting the first invoice of the construction phase:

- The Local Agency Contract Award Checklist (Exhibit 15-L in this chapter)
- Detail Estimate (Exhibit 15-M in this chapter)
- Finance Letter (Exhibit 15-N in this chapter)
- Resident Engineer's Construction Contract Administration Checklist (see Exhibit 15-B in this chapter)
- Copy of the Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1 in this chapter)
- Copy of the Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2 in this chapter)

The purpose of the Local Agency Award Checklist is to minimize delays in processing payments for federal-aid projects.

A "Detail Estimate" (see Exhibit 15-M) and "Finance Letter" (see Exhibit 15-N) must be prepared outlining all project costs by Improvement Type Code. From the information contained in the Detail Estimate, Division of Local Assistance will prepare a revised Authorization to Proceed (E-76), which automatically updates the funding agreement between Caltrans and FHWA. If the award amount is more, or significantly less than the amount estimated at the time of authorization, the administering agency should submit a revised E-76 and revised Finance Letter to the DLAE along with the Award Package.

NOTE: If the amount of federal funds obligated and agreed to in the "Authorization to Proceed (E-76)" is less than the full pro-rata share, the federal reimbursement ratio used in the Detail Estimate and subsequent progress invoices will be held at the ratio of federal funds to total project funds authorized in the E-76. That ratio may be increased in the final Detail Estimate and Final invoice up to the full pro-rata share to utilize the full amount of federal funds authorized.

The local agency and State personnel involved shall ensure timely processing of the Master Agreement, Program Supplement, Detail Estimate, and Finance Letter. The local agency is responsible for ensuring that the various forms are complete and accurate.

If at any time during construction, the project cost is expected to overrun, the administering agency must submit a Revised Detail Estimate **along with a request for modification of the Authorization to Proceed (E-76)**, and a revised Finance Letter. The Revised Detail Estimate should include the effects of all change orders and anticipated changed work through the end of the contract. This is to avoid future revisions.

It is the administering agencies responsibility to ensure that there are enough federal-aid funds programmed by their MPO/RTPA (STP, TEA, or CMAQ) or Caltrans (HSIP, HBP, ER, and RRX), to cover an increase due to a revised detail estimate. If additional federal funds are required, the local agency must obtain written approval from the MPO/RTPA or Caltrans prior to submitting a Revised Detail Estimate.

The Resident Engineer assigned to the project shall complete and sign the Resident Engineer's Construction Contract Administration Checklist. The purpose of this checklist is to assure that the resident engineer is familiar with the federal requirements before the project starts. Deficiencies in contract administration procedures discovered by process reviews are difficult to correct "after the fact." If the project has proceeded to the point that a deficiency cannot be corrected, federal and/or state funds may be withdrawn.

The DLAE shall perform a review of these documents for correct format and obvious errors and/or omissions. Complete and accurate documents will be forwarded to the DLA. The master agreement and program supplement must be executed prior to reimbursement. Invoices from the administering agency for the construction phase will be processed for reimbursement only after the project award information is submitted.

## 15.8 REFERENCES

23 USC 112  
23 USC 114(a)  
23 CFR 635  
23 CFR part 40  
23 CFR 630 Subpart C  
49 CFR 26  
California Public Contract Code, Chapter 6, Section 6100  
California Public Contract Code Section 7106  
FHWA TA T 5080.4, *Preparing Engineer's Estimate and Reviewing Bids* - 1980  
FHWA TA T 5080.6 *Guidelines on Contract Procedures with Emphasis on Bid Reviews and Evaluation* - 1982  
DOT, FHWA 1997 *Contract Administration Core Curriculum*  
FHWA *Final Report Process Review on Competition in Bidding and Engineer's Estimate Review* - 1991  
US DOT/US Dept. of Justice, *Suggestions for the Detection and Prevention of Construction Contract Bid Rigging* - 1983  
AASHTO *Suggested Guidelines for Strengthening Bidding and Contract Procedures* - 1981  
SAFETEA-LU Web site: <http://www.fhwa.dot.gov/safetealu/index.htm>



## 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.
- ☐ If the goal is specified, Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1).
- ☐ EEO Certification (Exhibit 12-E, Attachment C), The Noncollusion Affidavit (Exhibit 12-E, Attachment D), Non-Lobbying Certification (Exhibit 12-E, Attachment F), Disclosure of Lobbying Activities (Exhibit 12-E, Attachment G)
- ☐ Local Agency Bid Opening Checklist (Exhibit 15-I)

#### C. Contract Award

- ☐ Contracts are awarded on the basis of the lowest responsive bid from a responsible bidder (15.6 "Contract Award").
- ☐ For all NHS projects, a bid analysis will be performed (15.6 "Contract Award").
- ☐ No negotiations with contractor occurred prior to award (not allowed).

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

- ☐ Contract Award Checklist (Exhibit 15-L)
- ☐ Detail Estimate (Exhibit 15-M)
- | ☐ Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2)
- ☐ Finance Letter
- ☐ RE's Checklist

**D. Subcontracting**

- ☐ For all federal-aid transportation 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:** (1) Original Local Agency Project File  
(2) 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 Pre-construction 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: (Refer to Chapter 12, Section 12.9, pages 12-23 thru 25 of the LAPM)**

☐ Is the job less than 100 working days? Yes ☐ No ☐

If Yes, proceed to Item #12. If No, answer the questions below.

What is the total dollar amount of the items listed on page 12-24: \$ \_\_\_\_\_

What is the required number of trainees for this contract? \_\_\_\_\_

☐ Documentation will be retained in project files to account for the apprentices on the job.

**12. DBE:**

☐ UDBE Contract Goal Percentage: \_\_\_\_\_

☐ Local Agency's DBE Liaison Officer: \_\_\_\_\_

☐ Verified that copies of the completed Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1) and the Local Agency DBE Information (Construction Contracts) (Exhibit 15-G2) have been submitted to the DLAE immediately upon award.

- ☐ A copy of the Contractor's completed Local Agency Bidder UDBE Commitment (Construction Contracts) (Exhibit 15-G1) in project files.
- ☐ A copy of the Contractor's completed Local Agency Bidder DBE Information (Construction Contracts) (Exhibit 15-G2) in project files.
- ☐ Contractor has been provided "Monthly DBE Trucking Verification" Form (see Chapter 16, Exhibit 16-Z, of the LAPM)

**13. CCOs/CLAIMs:**

- ☐ A CCO approval process shall be established. For NHS projects, major change orders will be approved by DLAE prior to performance of work (see Chapter 16, Section 16.13 "Contract Change Orders").
- ☐ There shall be a list of the approved CCOs.
- ☐ All CCOs shall note federal-aid eligibility or not.
- ☐ Pending claims to be identified and documentation in contract file

**14. Traffic Safety in Highway and Street Work Zones:**

- ☐ Traffic Control Plan (TCP)/Traffic Management Plan (TMP) in the PS&E? Yes ☐ No ☐  
(see Chapter 16, Section 16.6 "Traffic Safety in Highway and Street Work Zones")  
Comments:

Responsible Person \_\_\_\_\_ (if not the RE)

- ☐ Local Agency shall field review the project to see that the TCP agrees with the actual conditions.
- ☐ Local Agency shall be analyzing construction work site accidents for the purpose of correcting deficiencies which might be found to exist on these projects and to improve the content of future TCPs.

**15. Materials Files:**

- ☐ The Quality Assurance Program (QAP) is in the project files (see Chapter 16, Section 16.14 "Quality Assurance Program").
- ☐ There shall be procedures for and filing of: (if appropriate)
  - Notice of Materials to be used
  - Certifications of Compliance
  - "Buy America" Requirements
- ☐ Acceptance Sampling and Testing Reports shall be in the files.
- ☐ There shall be a "Summary Log" of tests.
- ☐ Frequency tables shall be used.

☐ Failed tests shall be documented in the files with cross references to re-tests.

☐ Resident Engineer shall review all test reports.

**16. Environmental**

☐ The approved NEPA document is in the project files.

☐ The construction project shall adhere to the mitigation requirements in the approved NEPA document.

**17. For Projects on the State Highway System**

☐ A Caltrans Encroachment Permit has been issued.

☐ Local Agency shall comply with State's Representative's oversight requirements.

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Local Agency's Resident Engineer  
agency employee or Consultant,  
(Consultants on retainer are considered  
Local Agency employees)

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Local Agency's person in "Responsible (Local)  
Charge" if Resident Engineer is a Consultant.

Date: \_\_\_\_\_

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[illegible]

**LPP 09-02**

## INSTRUCTIONS - LOCAL AGENCY BIDDER UDBE COMMITMENT (CONSTRUCTION CONTRACTS)

### ALL BIDDERS:

**PLEASE NOTE:** It is the bidder's responsibility to verify that the UDBE(s) falls into one of the following groups in order to count towards the UDBE contract goal: 1) African Americans; 2) Asian-Pacific Americans; 3) Native Americans; 4) Women. This information may be submitted with your bid. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in the Special Provisions. Failure to submit the required UDBE commitment will be grounds for finding the bid nonresponsive.

A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Asian-Pacific Americans, Native Americans, or Women.

The form requires specific information regarding the construction contract: Local Agency, Location, Project Description, Total Contract Amount, Bid Date, Bidder's Name, and Contract UDBE Goal.

The form has a column for the Contract Item Number and Item of Work and Description or Services to be Subcontracted or Materials to be provided by UDBEs. Prime contractors shall indicate all work to be performed by UDBEs including, if the prime is a UDBE, work performed by its own forces, if a UDBE. The UDBE shall provide a certification number to the Contractor and expiration date. Enter the UDBE prime's and subcontractors' certification numbers. The form has a column for the Names of UDBE contractors to perform the work (who must be certified on the date bids are opened and include the UDBE address and phone number).

**IMPORTANT:** Identify **all** UDBE firms participating in the project regardless of tier. Names of the First-Tier UDBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the UDBE participation dollar amount. Enter the Total Claimed UDBE 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 UDBE, describe exact portion of time to be performed or furnished by the UDBE.) See Section "Disadvantaged Business Enterprise (DBE)," of the Special Provisions (construction contracts), to determine how to count the participation of UDBE firms.

Exhibit 15-G1 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.

**Local agencies** should complete the Local Agency Contract Award, Federal-aid Project Number, Federal Share, Contract Award Date fields and verify that all information is complete and accurate before signing and filing.

**EXHIBIT 15-G2 LOCAL AGENCY BIDDER DBE INFORMATION (CONSTRUCTION CONTRACTS)**  
(Inclusive of all DBEs including the UDBEs listed at bid proposal)**NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM**

LOCAL AGENCY: \_\_\_\_\_ LOCATION: \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_

TOTAL CONTRACT AMOUNT: \$ \_\_\_\_\_

BID DATE: \_\_\_\_\_

BIDDER'S NAME: \_\_\_\_\_

CONTRACT UDBE GOAL: \_\_\_\_\_

CONTRACT ITEM NO.	ITEM OF WORK AND DESCRIPTION OR SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED (or contracted if the bidder is a DBE)	DBE CERT NO. AND EXPIRATION DATE	NAME OF EACH DBE (Must be certified on the date bids are opened - include DBE address and phone number)	DOLLAR AMOUNT DBE

**For Local Agency to Complete:**

Local Agency Contract Number: \_\_\_\_\_

Federal-aid Project Number: \_\_\_\_\_

Federal Share: \_\_\_\_\_

Contract Award Date: \_\_\_\_\_

Local Agency certifies that all DBE certification have been verified and  
Information is complete and accurate.\_\_\_\_\_  
Print Name

Local Agency Representative

\_\_\_\_\_  
Signature\_\_\_\_\_  
Date

(Area Code) Telephone Number: \_\_\_\_\_

Total Claimed DBE  
Participation

\$ \_\_\_\_\_

\_\_\_\_\_  
%\_\_\_\_\_  
Signature of Bidder\_\_\_\_\_  
Date

(Area Code) Tel. No. \_\_\_\_\_

\_\_\_\_\_  
Person to Contact (Please Type or Print)**For Caltrans Review:**\_\_\_\_\_  
Print Name

Caltrans District Local Assistance Engineer

\_\_\_\_\_  
Signature\_\_\_\_\_  
DateLocal Agency Bidder DBE Information (Construction Contracts)  
(Rev 6/26/09)

**Distribution:** (1) Copy – Fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days of contract execution. Failure to send a copy to the DLAE within 15 days of contract execution may result in de-obligation of funds for this project.

(2) Copy – Include in award package to Caltrans District Local Assistance

(3) Original – Local agency files

## INSTRUCTIONS - LOCAL AGENCY BIDDER DBE INFORMATION (CONSTRUCTION CONTRACTS)

### SUCCESSFUL BIDDER:

The form requires specific information regarding the construction contract: Local Agency, Location, Project Description, Total Contract Amount, Bid Date, Bidder's Name, and Contract UDBE Goal.

The form has a column for the Contract Item Number and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own forces, if a DBE. The DBE shall provide a certification number to the Contractor and expiration date. Enter DBE prime and subcontractors certification number. The DBE contractors should 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.

**IMPORTANT:** Identify **all** DBE firms participating in the project--including all UDBEs listed on the UDBE Commitment form (Exhibit 15-G1), regardless of tier. Names of the First-Tier DBE subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the DBE participation 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.) See Section "Disadvantaged Business Enterprise (DBE)," of the Special Provisions (construction contracts) to determine how to count the participation of DBE firms.

Exhibit 15-G2 must be signed and dated by the successful bidder. Also list a phone number in the space provided and print the name of the person to contact.

**Local agencies** should complete the Local Agency Contract Number, Federal-aid Project Number, Federal Share, Contract Award Date fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of contract execution. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

**District DBE Coordinator** should verify that all informations is complete and accurate. Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

**EXHIBIT 15-H UDBE INFORMATION —GOOD FAITH EFFORTS****UDBE INFORMATION - GOOD FAITH EFFORTS**

Federal-aid Project No. \_\_\_\_\_ Bid Opening Date \_\_\_\_\_

The \_\_\_\_\_ (City/County of) \_\_\_\_\_ established an Underutilized Disadvantaged Business Enterprise (UDBE) goal of \_\_\_\_\_% for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the “Local Agency Bidder UDBE Commitment” form indicates that the bidder has met the UDBE goal. This will protect the bidder’s eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a UDBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the “Local Agency Bidder UDBE Commitment” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled “Submission of UDBE Commitment” of the Special Provisions:

- A. The names and dates of each publication in which a request for UDBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

<u>Publications</u>	<u>Dates of Advertisement</u>
_____	_____
_____	_____
_____	_____

- B. The names and dates of written notices sent to certified UDBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the UDBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

<u>Names of UDBEs Solicited</u>	<u>Date of Initial Solicitation</u>	<u>Follow Up Methods and Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

- D. The names, addresses and phone numbers of rejected UDBE firms, the reasons for the bidder's rejection of the UDBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each UDBE if the selected firm is not a UDBE:

Names, addresses and phone numbers of rejected UDBEs and the reasons for the bidder's rejection of the UDBEs:

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Names, addresses and phone numbers of firms selected for the work above:

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

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- F. Efforts made to assist interested UDBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the UDBE subcontractor purchases or leases from the prime contractor or its affiliate:

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- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using UDBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results
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- H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

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

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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)

Local Agency Bidder UDBE Commitment (Construction  
Contracts) included (Exhibit 15-G1) \_\_\_\_\_

(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-----AgencyLimits: \_\_\_\_\_  
(Physical limits reference post miles or intersections)

Has Caltrans issued an "Authorization to Proceed" in writing with federal funds included for construction, and is the amount correct? .....	(yes/no)
Copy of engineers estimate: .....	to be attached
Is material testing and sampling arranged? .....	(yes/no)
Copy of low bidder's proposal: .....	to be attached
Low Bid signed in ink? .....	(yes/no)
Is a Good Faith Effort Statement of UDBE Participation included in the low bidder's proposal? Only required if UDBE goal is not achieved (Exhibit 15-H)	(yes/no)
Local Agency Bidder UDBE Commitment included (Exhibit 15-G1)	not applicable
Is the Noncollusion Affidavit (Chapter 12, "PS&E," Exhibit 12-E, Attachment D) included in the low bidders' proposal?	to be attached
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: \_\_\_\_\_

\* If the date listed is more than 10-calendar days before bid opening, local agency must provide documentation that web site was subsequently checked within the 10-calendar day period or after bid opening, and there were no changes in the applicable federal wage rates.

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ESTADO DE CALIFORNIA • DEPARTAMENTO DE TRANSPORTACION  
**ENTREVISTA DE EMPLEADO: CUMPLIMIENTO  
 LABORAL / IOE** (IOE: programa de "IGUAL OPORTUNIDAD DE EMPLEO.")

CEM-2504 (Spanish) (NEW 11/2003) (Frente)

**CONFIDENCIAL**

*Este documento contiene informacion personal y de acuerdo al  
 codigo civil 1798.21 debera ser mantenida confidencialmente  
 con el fin de protegerla contra divulgaciones no autorizadas.*

Lock Data on Form

**AVISO ADA**

Para personas con incapacidad sensorial, este documento esta  
 disponible en forma alternativa. Para mas informacion llame a (916)  
 654-6410 or TDD (916) 654-3980o escriba a Records and Forms  
 Management, 1120 N Street, MS-89, Sacramento, CA 95814.

No DE CONTRATO

No DE FED

INSTRUCCIONS - (VEA EL REVERSO)

**1. A SER LLENADO POR EL ENTREVISTADOR** (Los datos pueden ser obtenidos de las planillas de pago o durante la revision de documentos)

NOMBRE DEL EMPLEADO		CLASIFICACION DEL TRABAJO
SUELDO BASICO MINIMO POR CONTRATO:	SUELDO BASICO	BENEFICIOS EMPRESARIALES
SUELDO BASICO MINIMO POR PLANILLA:	SUELDO BASICO	BENEFICIOS EMPRESARIALES
EMPLEADOR	CONTRATISTA PRINCIPAL EN EL PROYECTO (SI ES EL MISMO, INDIQUE)	
TRABAJO REALIZADO AL MOMENTO DE LA ENTREVISTA		

**2. PREGUNTAS AL EMPLEADO**

A. CUANTO TIEMPO HA TRABAJADO CON ESTA EMPRESA?		CUANTO TIEMPO HA TRABAJADO EN ESTE PROYECTO?	
B. DESCRIBA EL TIPO DE TRABAJO HECHO EN LA ULTIMA SEMANA			
C. CUAL ES SU SUELDO? [Incluya sueldo basico y beneficios (Compara con Planilla)]			USTED ANOTA SUS HORAS TRABAJADAS? <input type="checkbox"/> SI <input type="checkbox"/> NO
D. USTED TRABAJA HORAS EXTRAS? <input type="checkbox"/> FRECUENTEMENTE <input type="checkbox"/> POCO <input type="checkbox"/> NUNCA	LE PAGARON TIEMPO Y MEDIO POR LAS HORAS EXTRAS?	<input type="checkbox"/> SI <input type="checkbox"/> NO	SI ES NO, EXPLIQUE
E. LE HA ORIENTADO SU EMPLEADOR ACERCA DE AFICHES (TABLAS) DE LA ESCALA SALARIAL COLOCADOS EN EL PROYECTO?	<input type="checkbox"/> SI <input type="checkbox"/> NO	HA VISTO USTED ESOS AFICHES (TABLAS)?	<input type="checkbox"/> SI <input type="checkbox"/> NO SI ES NO, EXPLIQUE
F. ESTA USTED ENTERADO DE LAS REGLAS DEL CONTRATISTA ACERCA DEL IOE?	<input type="checkbox"/> SI <input type="checkbox"/> NO	REALIZA EL CONTRATISTA REUNIONES (JUNTAS) ACERCA DEL IOE?	<input type="checkbox"/> SI <input type="checkbox"/> NO CON QUE FRECUENCIA?
QUIEN DIRIGE LAS REUNIONES (JUNTAS)?	QUIEN ES EL REPRESENTANTE DEL IOE POR PARTE DE LA EMPRESA?	QUIEN ES EL REPRESENTANTE DEL IOE EN EL PROYECTO?	
G. ESTA USTED INTERESADO O SU EMPLEADOR LE HA INFORMADO ACERCA DE PROGRAMAS DE ASCENSO Y POSIBILIDADES DE ENTRENAMIENTO?			<input type="checkbox"/> SI <input type="checkbox"/> NO SI ES SI, EXPLIQUE

**3. PREGUNTAS ADICIONALES PARA OPERADORES PROPIETARIOS**

A. DESCRIPCION DEL EQUIPO		NUMERO DE LICENCIA DEL CAMION	NUMERO CA # DEL CAMION
PRECIO POR HORA (Operacion y Mantenimiento Total) \$	PRECIO BASICO DE RENTA DE EQUIPO \$	COMO ESTABLECE EL PRECIO DE LA RENTA DEL EQUIPO? <input type="checkbox"/> POR HORA <input type="checkbox"/> SEMANAL <input type="checkbox"/> MENSUAL	
B. ES USTED EL PROPIETARIO DEL EQUIPO? <input type="checkbox"/> SI <input type="checkbox"/> NO		PUEDO VER SU CERTIFICADO DE PROPIEDAD?	
PROPIETARIO LEGAL		PROPIETARIO REGISTRADO	
4. COMENTARIOS DEL EMPLEADO		5. COMENTARIOS DEL ENTREVISTADOR	
TIENE USTED ALGUN COMENTARIO O QUEJA ACERCA DE LOS SUELDOS O LAS REGLAS DEL IOE? SEA ESPECIFICO			
NOMBRE DEL ENTREVISTADOR (LETRA DE MOLDE)		NOMBRE DEL INGENIERO RESIDENTE (LETRA DE MOLDE)	
FIRMA DEL ENTREVISTADOR	FECHA	FIRMA DEL INGENIERO RESIDENTE	FECHA

FM 91 1282

91 61116

ESTADO DE CALIFORNIA • DEPARTAMENTO DE TRANSPORTACION  
**ENTREVISTA DE EMPLEADO: CUMPLIMIENTO**  
**LABORAL / IOE** ( IOE: programa de "IGUAL OPORTUNIDAD DE EMPLEO." )  
CEM-2504 (Spanish) (NEW 11/2003) (Reverso)

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***DIRECCIONES PARA EL ENTREVISTADOR***

- 1. Llene la seccion numero 1 con los datos de planilla, si estan disponibles y despues de la entrevista.***
- 2. Llene la seccion numero 2 completamente. (No se aplica a los operadores propietarios.)***
- 3. Llene la seccion numero 3 completamente.***
- 4. Los comentarios del Empleado en la seccion numero 4 son opcionales.***
- 5. Los comentarios del Entrevistador sobre los hechos encontrados y recomendaciones de tomar acciones futuras. Adjunte hojas adicionales si es necesario.***



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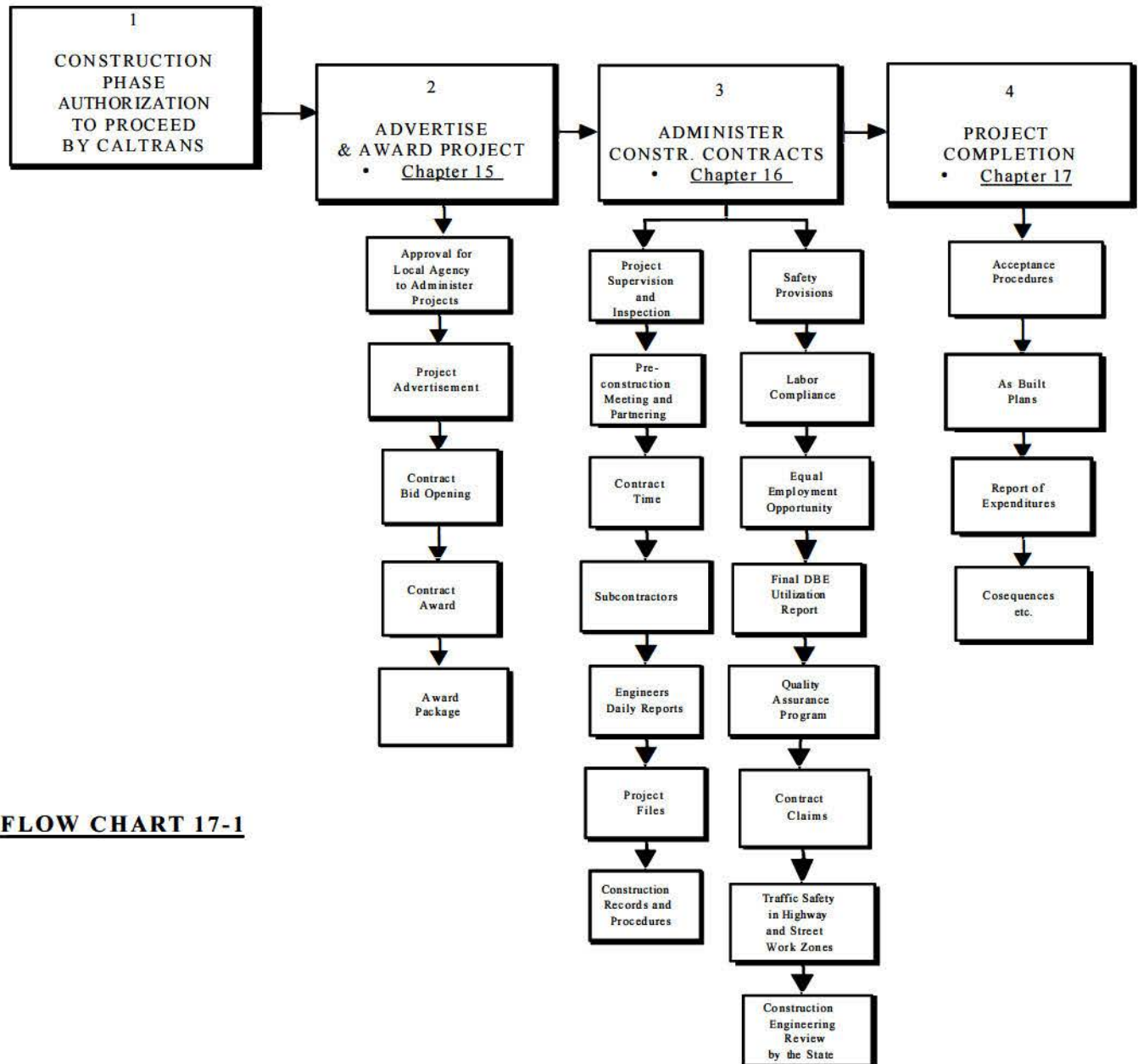
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## CHAPTER 17 PROJECT COMPLETION

### 17.1 INTRODUCTION

This chapter covers the topic of project completion. It is to be used mainly as a guide for administration of federal-aid contracts by local agencies. Each Resident Engineer should be familiar with the contents of this chapter, and Chapters 15, "Advertise and Award Project," and Chapter 16, "Administer Construction Contracts," before administering such contracts.



**FLOW CHART 17-1**

This chapter and Chapters 15, “Advertise and Award Project,” and Chapter 16, “Administer Construction Contracts,” of the *Local Assistance Procedures Manual* (LAPM) are for the use of local agencies, which administer federal-aid projects under a “Local Agency-State Agreement.” These three chapters cover general contract administration procedures.

When a locally sponsored project funded with federal-aid is within the state R/W and the State (Caltrans) is the administering agency, the *Caltrans Construction Manual* is normally used in lieu of these procedures.

## 17.2 DEFINITION OF TERMS

- EEO - Equal Employment Opportunity
- Final Invoice - Invoice listing final cost incurred for a particular phase of the project i.e., Preliminary Engineering, Construction Engineering, Right of Way, or Construction. The DLAE is required to verify project completion and approve payment before forwarding the final invoice to Local Programs Accounting (LPA). For example see Exhibit 17-C, and refer to Chapter 5, “Accounting/Invoices,” for instructions.
- Full Oversight - Projects on the Interstate that are new or reconstruction (not 3R) greater than \$1 million for which FHWA has Full Oversight.
- Form FHWA 1446C - Final Inspection of Federal-aid Project. Document used by Caltrans to complete the final inspection of NHS Projects subject to FHWA Full Oversight (Exhibit 17-B).
- Form FIF-6/05 - Final Inspection Form and revision date. Document used by local agency to complete the final inspection of all projects (Exhibit 17-C).
- Progress Invoice - Periodic billing invoice by local/regional agencies for reimbursement of costs on on-going contracts.
- Report of Expenditures - Collectively refers to various final report documents.
- 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 exercise the maximum degree of delegation or authority to local agencies (see Chapter 2, Section 2.4, “*Stewardship – Letters of Agreement*” and Figure 2-1, “*FHWA Oversight*.”
- Underutilized Disadvantaged Business Enterprise (UDBE) - A firm meeting the definition of a DBE as specified in 49 CFR, Part 26 and is one of the following groups: African Americans, Asian-Pacific Americans, Native Americans, or Women.

## 17.3 FINAL INSPECTION PROCEDURES FOR FEDERAL-AID PROJECTS

Local agencies shall document fulfillment of environmental mitigation commitments for final inspection Report of Expenditures and ultimate accountability as follows:

- Categorical Exclusion (CE) - Local agency shall provide the DLAE with a list of environmental mitigation commitments when requesting CE determination.

- Environmental Assessment (EA) - Local agency shall summarize when environmental mitigation commitments in the draft Finding of No Significant Impact (FONSI).
- Environmental Impact Statement (EIS) - Local agency shall summarize environmental commitments in the draft Record of Decision (ROD).

In addition, they shall acknowledge any long-term commitment to maintenance of those mitigation measures.

## STATE-AUTHORIZED PROJECTS

**Final Inspection by Local Agency** - The local agency representative or his/her staff shall make the final inspection using Final Inspection Form FIF-6/05, (see Exhibit 17-C). The local agency representative or staff performing final inspection or signing the Final Inspection Form shall be one with authority for accepting the completed contract on behalf of the local agency and authorizing final payment to the contractor, as well as directing corrective action(s) to be undertaken by the contractor.

The inspection of work performed by contract shall be made sufficiently in advance of contract acceptance to allow time for possible corrective action. Neither FHWA nor Caltrans inspection is required at this time.

The construction contract may not include all of the work contemplated in the project authorized such as striping by day labor. This work should nonetheless be completed in a timely manner.

Upon successful completion of all corrective actions undertaken by the contractor, acceptance of the contract, and completion of all additional work required for the authorized project, the local agency representative should complete Items 1-10 of the Final Inspection Form and forward it to the Caltrans DLAE.

**Project Verification by DLAE** - The DLAE or his/her staff depending on the district organization and type of project, will review the job site and verify that the project was constructed in accordance with the scope and description of the project authorization document. Any safety, design or construction deficiencies noted should be immediately brought to the attention of the local agency for correction or resolution. Upon satisfactory review by Caltrans staff, the DLAE shall ensure that Items 1-10 have been completed by the local agency prior to completing Items 11-13 on the Final Inspection Form. The DLAE shall retain the Final Inspection Form and send a copy to the local agency for the Report of Expenditures.

## FHWA FULL OVERSIGHT (NEW OR RECONSTRUCTION >\$1 MILLION)

Final inspection of major NHS projects shall be in accordance with written construction administration procedures discussed in Section 15.3 of the LAPM. All other NHS projects subject to FHWA Full Oversight shall be in accordance with the following:

**Final Inspection by Local Agency** - NHS subject to FHWA Full Oversight will require a final inspection by the FHWA. To initiate this inspection, the local agency will make the final inspection as described above for State-Authorized projects, accept the construction contract and submit the signed Final Inspection Form FIF-6/05 and reduced plan cover sheet and typical cross sections to the Caltrans Oversight Engineer (OSE) immediately upon completion of all work in the project authorization.

**Project Verification by OSE** - Upon receipt of the Local Agency Final Inspection Form, the OSE shall verify that the project has been completed as described in the plans and specifications. The OSE shall then transmit the necessary documents to the FHWA Transportation Engineer.

**Final inspection by FHWA** - The final inspection by FHWA will be coordinated by the OSE in accordance with Caltrans "*Oversight Field Engineer Guidelines*."

The DLAE shall receive from the OSE the "Report of Expenditures" prior to the DLAE processing the local agency's final project invoice.

## 17.4 AS BUILT PLANS

On locally administered contracts the resident engineer shall provide the DLAE a set of original structure tracings with "As Built" corrections, or a clear, readable, black-line copy of the original tracings with "As Built" corrections. The "As Built" corrections shall be made by the engineer responsible for structure work. These shall be forwarded by the DLAE to the Division of Structures with a copy of the Report of Completion of Structures (Exhibit 17-J). These shall be returned to the local agency after microfilming, if requested.

"As Built" corrections for the roadwork portion of the plans should be recorded in accordance with local agency requirements.

## 17.5 REPORT OF EXPENDITURES

The local agency is responsible for preparing and submitting to the DLAE the final report documents which collectively constitute a "Report of Expenditures." This report provides key information required to initiate timely project closure and payment. The Report of Expenditures is due at the completion of the project. Deadline for submittal of the Report(s) is six (6) months after project completion. If timely submittals are not received Caltrans shall initiate actions discussed under Section 17.6, "Consequences for Non-Compliance." The "Report of Expenditures" shall be signed by the public employee in responsible charge of the project.

### FEDERAL-AID PROJECTS

For federal-aid projects, the Report of Expenditures includes, as a minimum, the following documents:

- **A Cover Letter and Federal Report of Expenditures Checklist (Exhibit 17-A)** - Identifies all mandatory documents to be included in the Report of Expenditures. This checklist shall be submitted by the local agency with the report of completion. Copies of all documents included in the report of expenditures shall be maintained on file at the local agency for any future audits as specified in the Master Agreement and Program Supplement, and to serve as verification that contractor labor requirements were met.

- **Final Inspection Forms**
  1. **Final Inspection Form FIF-6/05 (Exhibit 17-C)** - This form when completed by both the local agency and the DLAE or OSE (SHS projects) shall be included as part of the Federal Report of Expenditures for all projects.
- **Final Invoice** - Final Invoice should conform to the format in Exhibit 17-D. Submit one original. The Final Invoice **must** agree with the Final Detail Estimate.
- **Final Detail Estimate** - The format of the final detail estimate is the same as presented in Chapter 15, Section 15.7, "Award Package," except that it must be labeled "Final" and show the total of previous progress payments plus the final invoice. The local agency shall prepare the final detail estimate. If claims are still pending, the final detail estimate should not be prepared until the claims are resolved. The final detail estimate must agree with the final invoice. State costs (Example: state material testing) should not be included in the final detail estimate prepared by the local agency. Once claims are settled, the final invoice and a final detail estimate shall be submitted to the DLAE as part of the Report of Expenditures.
- **Change Order Summary** - The Change Order Summary should conform to sample form in Exhibit 17-E. This is required regardless of whether or not change orders were made during the course of the contract. If there were none, please note "none." Additionally, the following mandatory items of information must also be included on this form:
  1. **Liquidated Damages** - Indicate the liquidated damage days charged (calendar days) if any, the amount per day, and the total amount charged. Refer to Chapter 16, "Administer Construction Contracts," Section 16.15, "Claims," for contractor's claims procedures. If there were no liquidated damages, please note "none." Liquidated damages shall also be shown on the Final Invoice and Final Detail Estimate.
  2. **Contractors Claims** - Refer to Chapter 16, "Administer Construction Contracts," Section 16.15, "Contract Claims," for contractor's claims procedures. If there were no contractor's claims, please note "none."
  3. **Date of acceptance**
- **Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors** (Exhibit 17-F) - This form shall be completed and signed, and it shall be in conformance with the requirements in Chapter 9, "Civil Rights and Disadvantaged Business Enterprises." The completed form shall be submitted to the DLAE or OSE (SHS projects) with the final report of expenditures for construction contracts (or as specified in the provisions for consultant contracts).
- **Disadvantaged Business Enterprises (DBE) Certification Status Change** (Exhibit 17-O) - This form shall be completed, signed, and submitted to the DLAE or OSE (SHS projects) with the final report of expenditures for construction contracts (or as specified in the provisions for consultant contracts). If no change, state so.
- **Materials Certificate** (Exhibit 17-G) - This certificate (commonly referred to as the "Materials Certificate") is to be included in the project files upon completion of the project. Exceptions to the certification should be documented in project records in summary form along with explanations and attached to the certificate, including change orders to accept nonconforming materials.

- **Statement of Materials and Labor Used by Contractors Involving Federal Funds FHWA - Form 47** (Exhibit 17-H) - This report is required for all NHS projects over \$1.0 million, except for force account, installation of protective devices, and railroad grade crossings or highway beautification.<sup>1</sup> Contract provisions require that the prime contractor complete and submit one combined or aggregate report for each subcontractor at or near completion. The local agency RE should check the completed form for reasonableness and accuracy. The DLAE should also review for reasonableness and accuracy and forward to DLA (who will maintain a file) for submission to FHWA headquarters. Instructions for completing the form are provided on the reverse side, as is the address for FHWA. This information can be submitted either in hard copy or electronically. The FHWA has developed personal computer software to automate the FHWA-Form 47 input. Copies of the software can be obtained from the DLAE and used by agencies that prefer to submit the information electronically.
- **Cover Letter for the Report of Completion of Structures and Report of Completion of Structures on Local Streets and Roads** (Exhibits 17-I and 17-J) This report is to be forwarded by the DLAE to the Engineering Service Center Division of Structures, Office of Structures Maintenance and Investigations Local Assistance Branch, for projects which include a bridge or other major structure. This information is necessary to incorporate all bridges into the statewide inventory and maintenance management system. (Include two (2) copies in the Report of Expenditures).
- **Report of Completion of Right of Way Expenditures** - Projects with Right of Way expenditures require additional information in the Report of Expenditures. When the project is complete, a summary of the progress payment requests is submitted on a Report of Completion of Right of Way Expenditures, Form FM 1592A (see Exhibit 17-K). This claim should be submitted when final right of way costs are known in order to expedite audit of the claim and reimbursement. The report shall also include the following:
  1. A parcel list.
  2. Final maps (those that come with Right of Way Certification if not previously sent).
  3. A breakdown of Right of Way costs (with participating costs shown separately). The total participating costs should equal the "Participating Costs to Date" as shown on the Final Progress Requests (Forms FM 1592A).
  4. Final Invoice for Right of Way - The invoice must be prepared on an agency letterhead; each phase must include:
    - a. All agency and project identification shown on the form including the Local Agency-State agreement number.
    - b. Dates and amounts of funding authorized for Incidental and Capital Outlay.
    - c. Period of expenditures (dates) for Incidental and Capital Outlay.
    - d. Cost breakdown for Incidental and Capital Outlay as follows:
      - Total Cost to Date
      - Rental Income
      - Nonparticipating Cost to Date
      - Subtotal - Participating Costs

<sup>1</sup> FHWA Division Administrator letter 7/2/96



- Participating Cost Previously Claimed
- Subtotal - Change in Participating Posts
- Reimbursement Ratio
- Amount of this Claim
- Invoice Total

Progress payment invoices shall be mailed directly to the Accounting Service Center in Sacramento at the address given in the example. No district review will be required for progress payments; however, final payment invoices shall be submitted directly to the DLAE as part of the Final Report of Expenditures and will be reviewed by the district prior to payment. A final detail estimate is not required for right of way only projects, since the final report of expenditures document provides the information required.

- **Force Account Projects** - Projects with Force Account work also require a Report of Expenditures. These projects are usually emergency relief type and include emergency repair work. Other federal-aid projects may incorporate all, or a part of the project to be built using the force account method. A completed example of a Report of Expenditures for a project including Force Account Work is included as Exhibit 17-L. For more information on force account procedures, see Chapter 12, “Plans, Specifications & Estimate,” under “Method of Construction.”

The DLAE shall perform a review of these documents for correct format and obvious errors and/or omissions. Upon verification that the Report of Expenditures is complete, the DLAE shall forward it to LPA for processing.

## STATE FUNDED PROJECTS

For state funded projects, in state transportation programs such as the Environmental Enhancement and Mitigation (EEM) Program, the local agency shall complete the “Final Project Expenditure Report” (Exhibit 17-M). The report with the final invoice attached will be submitted to the DLAE.

**Note:** These programs were intended under the blueprint legislation as state only funded projects. However due to varying circumstances of the state budget each year, and the variations of the State Highway Account, Caltrans at times may require projects in these programs to utilize federal-aid funds. When this occurs the Federal Report of Expenditures shall be completed as described under federal-aid projects above.

The DLAE will verify project completion as described for State-Authorized federal-aid projects, sign the report and, except for EEM projects, forward the original plus two copies to the Headquarters Division of Local Assistance.

For EEM projects, the DLAE will forward the original plus two copies of “Final Project Expenditure Report,” to the Local Programs Accounting, with a copy to the EEM Program Manager in the HQ Division of Local Assistance. Use “Final Report of Right of Way Expenditures”(Exhibit 17-N) for Projects involving the acquisition of real property or rights thereto with funds direct deposited into an escrow account. In this case, the DLAE will not verify project completion until the close of escrow is completed and the recordation of both the grant deed and the Agreement Declaring Restrictive Covenants (ADRC). A copy of the recorded grant deed(s) and the original ADRC will be attached to the final report of right of way expenditures.

## 17.6 CONSEQUENCES FOR NON-COMPLIANCE

Sanctions may be imposed by Caltrans on agencies that are found in noncompliance with the reporting requirements listed above in Section 17.5. The types of sanctions are further discussed in Chapter 19, "Process Reviews."

If there is a discrepancy between the Final Invoice and Final Detail Estimate, the agency is notified by phone that a discrepancy exists and their payment will be delayed until it is resolved. If the problem cannot be resolved within (180) days, the LPA shall bill the agency for all expenditures made on this project. If the local agency does not pay the accounts receivable bill within thirty (30) days, the LPA shall initiate action with the State Controller to offset funds due the local agency.

If the local agency has previously included in their billing, items not reimbursable by the FHWA or over-billed progress payments that exceed the Final Estimates, the local agency shall be billed for the overpayment. The local agency shall pay the state's accounts receivable bill within thirty days or LPA shall initiate action with the State Controller to offset funds due the local agency. The same policy shall apply to those recommendations from Process Review Reports on applicable findings or the improper utilization of Disadvantaged Business Enterprises.

## 17.7 REFERENCES

23 CFR 635 subpart D  
23 CFR 637 subpart B  
23 CFR 640.113  
23 CFR 635.126 and Section VI of FHWA Form-1273  
49 CFR Part 26  
Caltrans *Construction Manual*, Chapter 5, Section 5-1, "Project Records and Reports"  
Caltrans *Construction Manual*, Chapter 6, Section 6-01, 6-02, and 6-03, "Sampling and Testing"  
United States Code, Title 23 Chapter 1, Section 121, "Payment for States Construction"  
FHWA "Construction Administration Group" at:  
<http://www.fhwa.dot.gov/programadmin/contracts/index.htm>  
FHWA "Construction and Maintenance" at: <http://www.fhwa.dot.gov/construction/>

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES  
 (DBE), FIRST-TIER SUBCONTRACTORS**

**ADA Notice**

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814

CEM-2402F (REV 02/2008)

CONTRACT NUMBER		COUNTY	ROUTE	POST MILES	FEDERAL AID PROJECT NO.		ADMINISTERING AGENCY			CONTRACT COMPLETION DATE	
PRIME CONTRACTOR				BUSINESS ADDRESS						ESTIMATED CONTRACT AMOUNT \$	
ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIAL PROVIDED	COMPANY NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER	CONTRACT PAYMENTS						DATE WORK COMPLETE	DATE OF FINAL PAYMENT
				NON-DBE	DBE	BA UDBE	APA UDBE	NA UDBE	W UDBE		
				\$	\$	\$	\$	\$	\$		
				\$	\$	\$	\$	\$	\$		
				\$	\$	\$	\$	\$	\$		
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				\$	\$	\$	\$	\$	\$		
\$	\$	\$	\$	\$	\$						
ORIGINAL COMMITMENT \$ _____ UDBE			TOTAL	\$	\$	\$	\$	\$		BA- Black American APA- Asian-Pacific Islander NA-Native American W-Woman	

List all First-Tier Subcontractors, Disadvantaged Business Enterprises (DBEs) and underutilized DBEs (UDBEs) regardless of tier, whether or not the firms were originally listed for goal credit.  
 If actual UDBE utilization (or item of work) was different than that approved at time of award, provide comments on back of form. List actual amount paid to each entity.

**I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT**

CONTRACTOR REPRESENTATIVE'S SIGNATURE		BUSINESS PHONE NUMBER	DATE
<b>TO THE BEST OF MY INFORMATION AND BELIEF, THE ABOVE INFORMATION IS COMPLETE AND CORRECT</b>			
RESIDENT ENGINEER'S SIGNATURE		BUSINESS PHONE NUMBER	DATE

Copy Distribution-Caltrans contracts:  
 Copy Distribution-Local Agency contracts:

**Original** - District Construction  
**Original** - District Local Assistance Engineer  
 (submitted with the Report of Expenditure)

**Copy**- Business Enterprise Program  
**Copy**- District Local Assistance Engineer

**Copy**- Contractor  
**Copy**- Local Agency file

**Copy** Resident Engineer

FINAL REPORT – UTILIZATION OF DISADVANTAGED BUSINESS  
ENTERPRISES (DBE), FIRST-TIER SUBCONTRACTORS  
CEM 2402(F) (Rev. 02/2008)

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, Federal-aid Project No., the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the prime contractor name and business address. The focus of the form is to describe who did what by contract item number and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work both DBE and non-DBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

The form has a column to enter the Contract Item No. (or Item No's) and description of work performed or materials provided, as well as a column for the subcontractor name and business address. For those firms who are DBE, there is a column to enter their DBE Certification Number. The DBE should provide their certification number to the contractor and notify the contractor in writing with the date of the decertification if their status should change during the course of the project.

The form has six columns for the dollar value to be entered for the item work performed by the subcontractor.

The Non-DBE column is used to enter the dollar value of work performed for firms who are not certified DBE.

The decision of which column to be used for entering the DBE dollar value is based on what program(s) status the firm is certified. This program status is determined by the California Unified Certification Program by ethnicity, gender, ownership, and control issues at time of certification. To confirm the certification status and program status, access the Department of Transportation Civil Rights web site at:

<http://www.dot.ca.gov/hq/bep> or by calling (916) 324-1700 or the toll free number at (888) 810-6346.

Based on this DBE Program status, the following table depicts which column to be used:

DBE Program Status	Column to be used
If program status shows DBE only with no other programs listed	DBE
If program status shows DBE, Black American	BA UDBE
If program status shows DBE, Asian-Pacific Islander	APA UDBE
If program status shows DBE, Native American	NA UDBE
If program status shows DBE, Woman	W UDBE

If a contractor performing work as a DBE on the project becomes decertified and still performs work after their decertification date, enter the total dollar value performed by this contractor under the appropriate DBE identification column.

If a contractor performing work as a non-DBE on the project becomes certified as a DBE, enter the dollar value of all work performed after certification as a DBE under the appropriate identification column.

Enter the total of each of the six columns in Form CEM-2402(F).

Any changes to DBE certification must also be submitted on Form-CEM 2403(F).

Enter the Date Work Completed as well as the Date of Final Payment (the date when the prime contractor made the "final payment" to the subcontractor for the portion of work listed as being completed).

The contractor and the resident engineer sign and date the form indicating that the information provided is complete and correct.