

**DEPARTMENT OF TRANSPORTATION**

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*Making Conservation  
a California Way of Life.*

March 2019

To: Federal Grant Subrecipient  
RE: DBE and Non-DBE Contracting Oversight

Dear Subrecipient:

The California Department of Transportation (Caltrans), Division of Rail and Mass Transportation (DRMT) is a Federal Transit Administration (FTA) recipient of Section 5310, 5311, and 5339 funds. As a recipient, DRMT is required to verify subrecipients follow 49 CFR Part 26 Participation by Disadvantaged Business Enterprise (DBE) in Department of Transportation Financial Assistances Programs.

The FTA recently conducted an extensive review of the Caltrans DBE Program. The outcome of that review found deficiencies with the Program that requires corrective action from Caltrans and our subrecipient agencies. As part of the corrective action, Caltrans will be implementing new procedures to verify subrecipients utilizing FTA funds comply with 49 CFR Part 26.

**Demonstrating Subrecipient DBE Compliance to Caltrans**

Agencies receiving 5310, 5311 or 5339 funds are, by default, included in the Caltrans DBE Program Plan and must coordinate their DBE and Non-DBE third-party contracting opportunities through DRMT. The Caltrans DBE Program Plan is managed by the Caltrans Office of Business and Economic Opportunity (OBOE). To ensure DRMT and its subrecipients comply with DBE regulations, DRMT will coordinate subrecipient DBE and Non-DBE third-party contracting opportunities through OBOE.

Subrecipients must establish DBE goals for third-party contracting and subcontracting opportunities at all FTA purchasing threshold levels (i.e., micro, small, and large), and document commitment and utilization of DBEs throughout the life of the contract.

Effective immediately, subrecipients are now required to:

1. Provide annually to DRMT a signed *DRMT DBE Implementation Agreement*—pending finalization and distribution to subrecipient.
2. Certify annually to DRMT the FTA dollar value likely utilized to support third-party contracts and subcontracts over the federal fiscal year—collected through the *DRMT Annual DBE Threshold Questionnaire*, enclosed and due April 15, 2019, then due annually January 31.

3. Include contract assurances in third-party contracts consistent with the Caltrans DBE Program Plan—provided through item 2a on the DRMT procurement web page.
4. Utilize the Caltrans Office of Business and Economic Opportunity (OBE) DBE database to calculate DBE contracting goals for every purchase supported with FTA funds—See link below.
5. Submit form 9-D: *DBE Contract Goal Methodology* to DRMT for concurrence as part of all third-party contracting opportunities prior to the purchase or release of the solicitation—enclosed.
6. Submit form ADM-0227F *DBE Information/Underutilized Participation* completed by the offeror, as part of their offer, to DRMT for concurrence prior to the award of a third-party contract—enclosed.
7. In the instance where DBE third-party contract goals cannot be met by an offeror, subrecipient completes ADM-0312F *Bidder/Proposer Disadvantaged Business Enterprise (DBE) Good Faith Efforts Documentation* and submits to DRMT along with form ADM-0227F, for concurrence prior to the award of a third-party contract—enclosed.
8. Submit to DRMT an electronic “bidders list” worksheet as defined by 49 CFR Part 26.11 of all DBE and Non-DBE firms that bid, quote, or proposed on the FTA funded contract—worksheet enclosed and available for download on the Caltrans DRMT DBE web page.
9. For FTA supported rollingstock purchases, submit to DRMT documentation of the final Purchase Order within 15 days of submittal to the vendor to meet transit vehicle manufacturer (TVM) reporting requirements.

The aforementioned is required in addition to the Semi-Annual DBE reports currently collected by DRMT in April and October.

### **Potential Subrecipients DBE Reporting Exemptions**

Caltrans may implement an MOU to allow agencies that receive funds directly from the FTA to report their DBE and Non-DBE third-party contracting opportunities directly to the FTA. *This direct reporting relationship must be established in writing by Caltrans; and prior to the Caltrans 2019-2022 three-year DBE reporting period.* Agencies that are unable to aggregate their direct funds with 5310, 5311, or 5339 funds prior to the Caltrans DBE three-year reporting period will remain a part of the Caltrans DBE Program Plan and must report their DBE and Non-DBE third-party contracting opportunities to Caltrans.

Subrecipients utilizing less than \$250,000.00 of FTA funds in a Federal fiscal year for third-party contracting activities will formally be exempted by Caltrans from DBE requirements, per 49 CFR Part 26.21. *DRMT will survey subrecipients annually to forecast their utilization of FTA funds through the Annual DBE Threshold Questionnaire.*

DBE participation requirements for rollingstock purchases are coordinated directly by the FTA and the transit vehicle manufacturer (TVM). Rollingstock purchases are excluded from DBE reporting thresholds; however, rollingstock purchases must be reported to the FTA by DRMT.

### **Consequences of DBE Non-Compliance**

Failure by the subrecipient to carry out DBE requirements is a material breach of the DOT 213, Standard Agreement. Breaches may result in the termination of the Standard Agreement, the termination of the impacted third-party contract between the subrecipient and prime contractor, or such other remedy Caltrans deems appropriate, which may include, but is not limited to:

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

Subrecipient agencies awarding contracts without prior DRMT approval risk being denied FTA reimbursement.

For more information on DBE requirements, please contact the DRMT Compliance Liaison, Sharon Beasley at [sharon.beasley@dot.ca.gov](mailto:sharon.beasley@dot.ca.gov) or (916) 657-5206.

Enclosures: Form 9-D  
Form ADM-0227F  
Form ADM-0312F  
Bidders List worksheet  
Annual DBE Threshold Questionnaire  
Tips for completing form 9-D

Resources: OBEO DBE database <http://www.dot.ca.gov/obeo/index.html>