

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
INSTRUCTIONS TO BIDDERS**

This project is subject to Title 49, Part 26.13(b), Code of Federal Regulations [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.

You are required to take necessary and reasonable steps to ensure that Disadvantaged Business Enterprises (DBEs) have opportunity to participate in the contract (49 CFR 26). 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 49 CFR 26.5.

To ensure there is equal participation of the DBE groups specified in 49 CFR 26.5, the City will specify a DBE goal for each Federal-aid transportation contract.

You are required to make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

You are required to either, A) meet the DBE goal shown in the Notice Inviting Bids, or B) demonstrate that you have made adequate good faith efforts to meet this goal.

FAILURE TO MEET EITHER A) OR B) REQUIREMENTS, ABOVE, WILL RENDER THE BID NON-RESPONSIVE.

It is your responsibility to verify that a subcontracting firm is properly certified as a DBE at the 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

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

1. 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55. Additional information regarding credit for trucking companies can be found under section "Subcontractor and DBE Records."

PREBID MEETING

A prebid meeting is scheduled for this project (refer to "Notice Inviting Bids"). The meeting is to inform bidders of project requirements, subcontractors of subcontracting and material supply opportunities, and to provide DBEs the opportunity to meet and interact with prospective bidders.

DBE COMMITMENT SUBMITTAL

Bidders are required to submit DBE information on the form "Local Agency Bidder-DBE Commitment (Construction Contracts)," Exhibit 15-G (hereafter referred to as DBE Commitment form). Bidders can access current Caltrans forms for the New Race Conscious Program at the following website:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

If the DBE Commitment form is not submitted with the bid, the DBE Commitment form must be received by the City no later than 4:00 p.m. on the 4th business day after bid opening. The apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the DBE Commitment form to the City.

Other bidders do not need to submit the DBE Commitment form unless the City requests it. If the City requests you to submit a DBE Commitment form, submit the completed form within 4 business days of the request.

Bidders are required to submit written confirmation from each DBE stating that it is participating in the contract. Include confirmation with the DBE Commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract.

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. If a DBE is participating as a joint venture partner, the successful bidder should submit a copy of the joint venture agreement.

If you do not submit the DBE Commitment form within the specified time, the City will find your bid nonresponsive.

GOOD FAITH EFFORTS SUBMITTAL

If you have not met the DBE goal, you must complete and submit the “DBE Information - Good Faith Efforts,” Exhibit 15-H, form with the bid showing that you made adequate good faith efforts to meet the goal. Bidders can access current Caltrans forms for the New Race Conscious Program at the following website:
<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>.

Only good faith efforts directed towards obtaining participation by DBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the City no later than 4:00 p.m. on the 4th business day after bid opening.

If your DBE Commitment form shows that you have met the DBE goal or if you are required to submit the DBE Commitment form, you may also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the City finds that the DBE goal has not been met.

Good faith efforts documentation must include at a minimum the following information and supporting documents:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with your own forces and those items that have been broken down into economically feasible units to facilitate DBE 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 DBE firms.
2. Names of certified DBEs 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 DBEs 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 DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.
3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested DBE 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 DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested DBEs 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 DBE 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 DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the DBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the DBE 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.

Please note that you may risk losing the bid if you rely on good faith efforts documentation in lieu of meeting the DBE goal. If your good faith efforts are found to be inadequate, your bid will be deemed nonresponsive. In determining whether a bidder has made good faith efforts, the City will take into account the performance of other bidders in meeting the contract. For example, if the apparent successful bidder fails to meet the contract goal, but others meet it, the City may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. The City will specifically consider the DBE commitments of the 2nd and 3rd bidders when determining whether the low bidder made good faith efforts to meet the DBE goal. Bidders not meeting a DBE contract goal are cautioned to not automatically assume that their documentation will be adequate to pass the good faith efforts test. All documentation will be very carefully scrutinized.

SUBCONTRACTOR AND DBE RECORDS

Caltrans Exhibit 12-B, Bidder's List of Subcontractors (DBE and Non-DBE) Parts I and II, is required to be completed by the contractor and submitted with your bid. Bidders can access current Caltrans forms for the New Race Conscious Program at the following website:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>.

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, ethnicity and gender of DBE firm owner as shown in the Caltrans Unified Certification Program database (http://www.dot.ca.gov/hq/bep/find_certified.htm), 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.

By the end of every month during the contract or as requested, Contractor shall submit reports of payments made to all DBE subcontractors regardless of tier to the Engineer. 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) (Exhibit 17-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 90 days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a

satisfactory form is submitted. Bidders can access current Caltrans forms for the New Race Conscious Program at the following website:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

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.

The Contractor shall 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) (Exhibit 16-Z). Bidders can access current Caltrans forms at the following website:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

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) (Exhibit 17-O) indicating the DBEs' existing certification status shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Engineer within 90 days from the date of contract acceptance. Bidders can access current Caltrans forms at the following website:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

PERFORMANCE OF SUBCONTRACTORS

The subcontractors listed by you in your bid proposal 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.

DBEs must perform work or supply materials as listed in the "Local Agency Bidder - DBE Commitment" form (Exhibit 15-G). Do not terminate a DBE listed subcontractor for convenience and perform the work with your own forces or obtain materials from other sources without prior written authorization from the City.

The City grants authorization to use other forces or sources of materials for requests that show any of the following justifications:

1. Listed DBE 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 DBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE delays or disrupts the progress of the work.
7. Listed DBE becomes bankrupt or insolvent.

If a listed DBE subcontractor is terminated, you must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution.

The City will not pay for work or materials unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section.

PROMPT PAYMENT OF WITHHELD FUNDS TO CONTRACTORS

The City of Stockton shall hold five percent (5%) retainage from the prime Contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City, 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 City of Stockton. Any delay or postponement of payment over 30 days may take place only for good cause and following written approval from the City of Stockton. 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. 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 subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

DBES AND EQUAL EMPLOYMENT OPPORTUNITY

Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

- a. The contractor shall notify all potential subcontractors and suppliers of his/her Equal Employment Opportunity (EEO) obligations under this contract.
- b. Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his/her best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Lists of DBE construction firms may be obtained from the Caltrans website at the following URL:
http://www.dot.ca.gov/hq/bep/find_certified.htm

Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State Highway Agency and the Federal Highway Administration.

- a. The records kept by the contractor shall document the following:
 - (1) The number of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - (4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the State Highway Agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Federal Highway Administration Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. Federal Highway Administration forms can be found at the following web link: <http://www.fhwa.dot.gov/eforms/>

