

Disadvantaged Business Enterprise (DBE) Program

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DBE Program Objectives

- Ensure non-discrimination in award & administration of federally funded projects.
- Create a level playing field in which DBE's can compete fairly.
- Encourage More DBE firms to participate federally funded projects

Local Agencies Responsibility (LAPM Chapter 9, Section 9.6)

Local agency recipients of federal financial assistance must comply with all the elements of Title 49 CFR 26 entitled Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

Local Agencies responsibilities are described in detail in LAPM Chapter 9, section 9.6.

Some of the Local Agencies Responsibility are listed as follow:

1. Submit Exhibit 9-A: DBE Implementation Agreement for Local Agencies, before a request for authorization is processed
2. Submit Exhibit 9-B: Local Agency DBE Annual Submittal Form, annually by June 30

Local Agencies Responsibility (LAPM Chapter 9, Section 9.6)

3. Some Updated DBE Recently in LAPM:

(1) **Prompt Payment** from **Agency** to **Contractors**

Section 20104.50 of California Public Contract Code requires that local agencies pay contractors no more than **30** days after receipt of contractor's request for payment.

Section 7107 of California Public Contract Code provides that the Agency must pay the prime contractor within **60** days after the date of completion (retention payment due).

Section 3329 of California Civil Code requires that local agencies pay design professionals within **30** days of their demand if it is progress payment, and within **45** days if retention is due.

Local Agencies Responsibility (LAPM Chapter 9, Section 9.6)

The following two requirements need to be included in the contract:

(2) **Prompt Progress** Payment to **Subcontractor**

Section 7108.5 of the California Business and Professions Code (CBPC) requires a **prime contractor** or **subcontractor** to pay any **subcontractor not later than seven (7)** days after receipt of each progress payment received, unless otherwise agreed to in writing.

Section 3321 of the California Civil Code (CCC) requires **prime design professionals** (prime consultants directly in contract with a public agency) to pay any **subconsultant** not later than fifteen (**15**) days after receipt of each progress payment or final retention payment.

Local Agencies Responsibility (LAPM Chapter 9, Section 9.6)

(3) 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:

- I. The local agency may decline to hold retainage from prime contractors and prohibit prime contractors and subcontractors from holding retainage from subcontractors.
- II. 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 the following timeframes:
 - a. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC), and
 - b. For consultant contracts, retainage must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (Section 3321 of the CCC).

Local Agencies Responsibility (LAPM Chapter 9, Section 9.6)

III. 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 within the following timeframes:

- a. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC), and
- b. For consultant contracts, retainage must be paid not later than fifteen (15) days after receipt of final retention received after the subconsultant's work is satisfactorily completed (Section 3321 of the CCC).

Local Agencies Responsibility (LAPM Chapter 9, Section 9.6)

- Monitoring and Enforcement Mechanism for Prompt Payment

Per 49 CFR 26.29(d), the Agency is required to stipulate the monitoring and enforcement mechanisms in the contract to ensure that all subcontractors, including DBEs, are promptly paid. These mechanisms may include appropriate penalties for failure to comply with the terms and conditions of the contract. The mechanisms may also provide that any delay or postponement of payment among the parties may take place only for good cause with the Agency's prior written approval.

DBE Procedures

1. Goal Setting
2. Good Faith Efforts
3. Reconsideration Hearing

1. Goal Setting (LAPM Chapter 9, Section 9.7)

- DBE Contract Goal

All Federal funded contracts that have subcontracting opportunities must have a DBE goal. This includes but is not limited to: Construction, consultant services such as project specific A &E, and master on-call A&E contracts. A DBE goal must be specified prior to advertisement.

- Use Exhibit 9-D: DBE Contract Goal Methodology, to calculate the Contract DBE goal
- Submit 9-D to Caltrans for Review

(1) Federal Aid Number: 5002(123)

(2) Local Agency: City of Sacramento

(3) Project Title: Downtown Bike Plan, Phase II

(4) Project Description: Create traffic-protected bike lane on P St. from 11th St to 12th St.

(5) Phase (Please mark below)		(6) Contract Type (please mark below)	
PE		On-Call	
CE		Multi-phase	
PE and CE		Project Specific	X
CON	X		

(7) Item No.	(8) Approx. Quant.	(9) Meas. Unit	(10) Item Description	(11) Unit Price	(12) Total	(13) Likely to be Performed by Sub-contractor (Y=Yes)?	(14) Trucking or Supply of Material Involved (Y=Yes)?	(15) Work Category Code (enter a code if corresponding cell in either Column G or H is "Y")	(16) Number of Available DBEs	(17) DBE Work Factor (100% if DBEs ≥ 7 12% if supply component 10% if trucking component)	(18) DBE Work Amount	(19) Comment
1	1	LS	Mobilization	\$ 55,000.00	\$ 55,000.00						\$0.00	
2	1	LS	Traffic Control	\$ 50,000.00	\$ 50,000.00	Y		C1201	25	100%	\$50,000.00	≥ 7 DBEs in District
3	1	LS	Storm Water Pollution Prevention Plan	\$ 20,560.00	\$ 20,560.00	Y		C8713, C8722	192	100%	\$20,560.00	≥ 7 DBEs in District
4	362	CY	Roadway Excavation	\$ 75.00	\$ 27,150.00		Y	C9607		10%	\$2,715.00	Trucking
5	1	EA	Relocate Bus Bench	\$ 200.00	\$ 200.00						\$0.00	
6	2,050	TON	Construct Hot Mix Asphalt	\$ 125.00	\$ 256,250.00		Y	C9602		10%	\$25,625.00	Trucking
7	2,570	CY	Construct Aggregate Base Class II	\$ 40.00	\$ 102,800.00		Y	C9602		10%	\$10,280.00	Trucking
8	82	CY	Concrete Bus Pad, including Monolithic Curb, Lean Concrete Base and Sub-base	\$ 250.00	\$ 20,500.00		Y	C0651		12%	\$2,460.00	Supplies
9	1,500	SF	Construct 4" thick PCC Sidewalk	\$ 4.00	\$ 6,000.00		Y	C0651		12%	\$720.00	Supplies
10	5	LS	Traffic Detectors	\$ 5,000.00	\$ 25,000.00	Y		C8609	7	100%	\$25,000.00	≥ 7 DBEs in District
11	1	EA	Construct ADA Curb Ramp, Case A	\$ 1,900.00	\$ 1,900.00		Y	C0651		12%	\$228.00	Supplies
12	1	EA	Construct ADA Curb Ramp, Case C (Mod)	\$ 3,000.00	\$ 3,000.00		Y	C0651		12%	\$360.00	Supplies
13	470	LF	Construct Type A2-6 curb (Caltrans std plan AS7A)	\$ 30.00	\$ 14,100.00		Y	C0651		12%	\$1,692.00	Supplies
14	700	LF	Construct Type B3-5 curb (Caltrans std plan AS7A) at Median Island	\$ 10.00	\$ 7,000.00		Y	C0651		12%	\$840.00	Supplies
15	64	LF	Construct Retaining Curb Type A1-12 (Caltrans std plan AS7A Mod)	\$ 40.00	\$ 2,560.00		Y	C0651		12%	\$307.20	Supplies
16	1,330	SF	Construct 6-inch thick PCC at Median Island	\$ 6.00	\$ 7,980.00		Y	C0651		12%	\$957.60	Supplies
17	1	EA	Construct Parkway Drain (at Sta 450+41)	\$ 1,500.00	\$ 1,500.00		Y	C0671		12%	\$180.00	Supplies
18	1	EA	Construct Parkway Drain (at Sta 439+39)	\$ 2,500.00	\$ 2,500.00		Y	C0671		12%	\$300.00	Supplies
19	220	LF	Construct Reinforced Concrete Box Culvert	\$ 200.00	\$ 44,000.00		Y	C0651		12%	\$5,280.00	Supplies
20	1	EA	Construct Curb Opening Inlet (Type OL-7) Caltrans std plan D72 including corner connection junction structure and local depression	\$ 2,000.00	\$ 2,000.00		Y	C0651		12%	\$240.00	Supplies
21	1	LS	Clearing and Grubbing	\$ 75,000.00	\$ 75,000.00	Y		C1601	50	100%	\$75,000.00	≥ 7 DBEs in District
22	1	LS	Signing and Striping	\$ 140,000.00	\$ 140,000.00		Y	C0800		12%	\$16,800.00	Supplies
23	1	LS	Record of Construction Changes	\$ 6,999.00	\$ 6,999.00						\$0.00	
24	1	LS	Traffic Signal Modifications	\$ 50,000.00	\$ 50,000.00		Y	C0686		12%	\$6,000.00	Supplies

(20) WORK ITEM TOTAL \$921,999.00

(21) TOTAL DBE WORK AMOUNT \$245,544.80

(22) X 80% Factor X 80%

(23) DBE CONTRACT GOAL AMOUNT \$196,435.84

(24) DBE Goal Percentage 21%

DBE Goal Setting Methodology

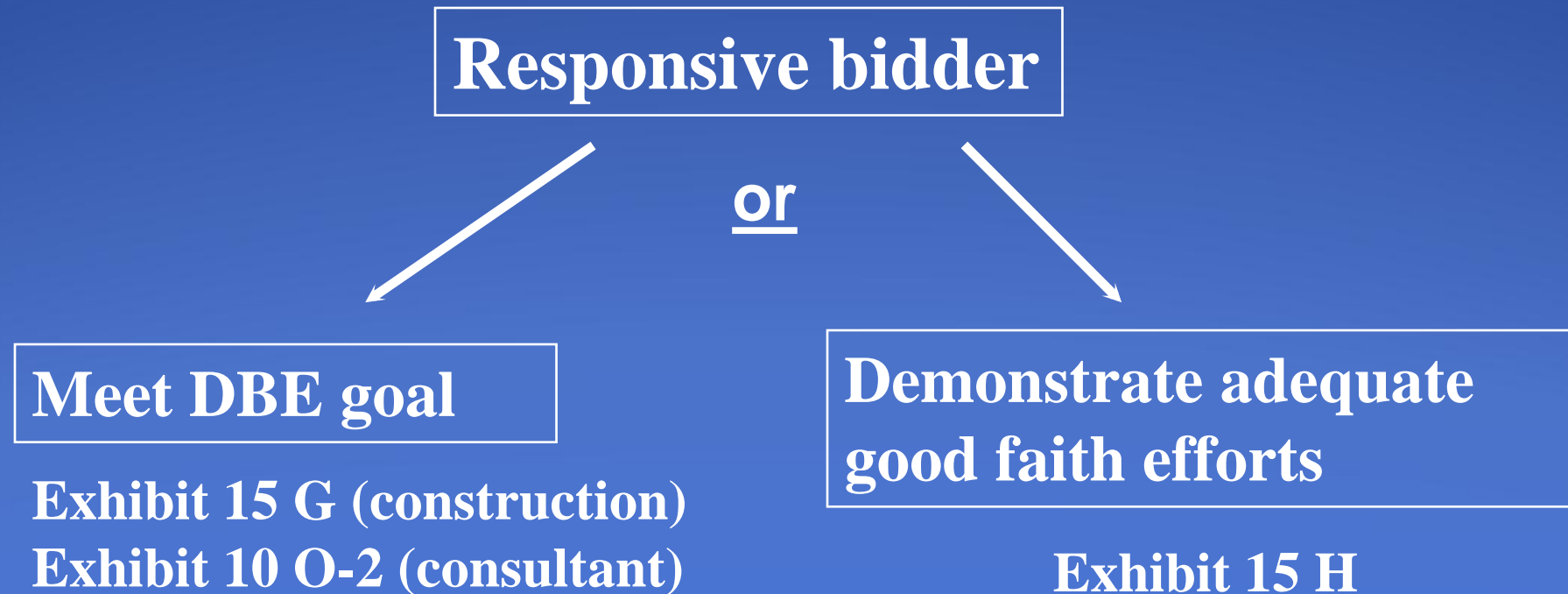
1. Classify work (subcontractor, trucking, material/supply)
2. Determine work category codes for subcontractor work items
3. Search the California Unified Certification Program database
4. Apply DBE factors to items of work (100%, 10%, 12%)
5. Calculate a soft goal
6. Apply 80% factor
7. Round to nearest whole percent

Submitting Exhibit 9-D to Caltrans for Review

- Construction contracts > \$2,000,000
- Consultant contracts > \$500,000
- Exhibit 9-D to Dbegoal.gfe@dot.ca.gov
- OCR reviews within 15 business days

Contract Award

- Award contract to lowest responsive bidder



2. Good Faith Efforts (LAPM Chapter 9, Section 9.8)

- The bidder took all *necessary and reasonable steps* to achieve a DBE goal that by their *scope, intensity, and appropriateness to the objective* could reasonably be expected to obtain sufficient DBE participation.
- Recipients consider the *quality, quantity, and intensity* of the different kinds of efforts.
- Efforts should be those that one could reasonably expect a bidder to take if the bidder were *actively and aggressively* trying to meet the goal.

Adequate Good Faith Efforts?

Quality,
Quantity,
Intensity of
Efforts

- ◆ *Solicitations*
- ◆ *Break Out Items*
- ◆ *DBE commitment of 2nd & 3rd bidders*
- ◆ *Amount of work made available*
- ◆ *DBE Commitment*
- ◆ *# and \$ of DBE Bids*
- ◆ *Bonding, Insurance, Materials, and Supplies Assistance*
- ◆ *Plans, Specs., and Requirements Available*
- ◆ *Other Factors*

Actively &
Aggressively trying to meet goal?

Submitting GFE Package

- Local agency must obtain, complete and review all of the following documentation in order to determine if the low bidder or the most qualified consultant made a GFE:
 1. Exhibit 15-D: Bid Tabulation Summary Sheet, or Exhibit 10-O1: Consultant Proposal DBE Commitment
 2. All bidder's Exhibits 15-G: Construction Contract DBE Commitment, or Exhibit 10-O1
 3. All bidders Exhibit 15-H: Proposer/Bidder Good Faith Efforts, or other documentation that all bidders' submit in lieu of 15-H
 4. Exhibit 9-E: Local Agency Good Faith Effort Review

Submitting GFE to Caltrans for Review

- Construction contracts > \$2,000,000
- Consultant contracts > \$500,000
- GFE Package to Dbegoal.gfe@dot.ca.gov
- OCR reviews within 15 business days

- For those contracts less than or equal thresholds, local agency is responsible to review the GFE package.

Submitting GFE to Caltrans for Review

If Caltrans determines the GFE was inadequate, the local agency will take Caltrans feedback on GFE into consideration and re-evaluate the GFE. After the reevaluation:

- If the local agency still thinks the GFE is adequate, they can award the contract or start the negotiation process.
- If the local agency concludes that the GFE is inadequate, they must invite the low bidder or the most qualified consultant to an Administrative Reconsideration

Administrative Reconsideration Hearing

- If local agency determines that the apparent successful bidder has failed to meet the GFEs requirements, the local agency, before awarding the contract, must provide the apparent successful bidder the opportunity for administrative reconsideration hearing in accordance with 49 CFR 26.53.
- Reconsideration Panel
 - (1) Three People
 - (2) Did not participate the original GFE evaluation
- The conclusion of the Reconsideration is final. The conclusion is not appealable to the local agency, Caltrans and FHWA.

Questions?