

DEPARTMENT OF TRANSPORTATION

DIVISION OF LOCAL ASSISTANCE – M.S. 1

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March 4, 2009

TO: ALL CITIES AND COUNTIES IN CALIFORNIA
METROPOLITAN PLANNING ORGANIZATIONS
REGIONAL TRANSPORTATION PLANNING AGENCIES

Dear Directors:

Re: Mandatory Race Conscious DBE Program

The Federal Highway Administration (FHWA) has approved the California Department of Transportation's 2009 Disadvantaged Business Enterprise (DBE) Annual Overall Goal. FHWA's approval requires the immediate implementation of the new DBE Program that includes a Race Conscious component (RC DBE Program). Effective immediately the California Department of Transportation (Caltrans) and local agencies receiving federal-aid funds must begin transitioning to the new RC DBE Program.

Transition Period

Local agencies may have until June 2, 2009 to transition to the newly approved RC DBE Program. This allows local agencies until June 2, 2009, to adopt and execute the new RC DBE Program and allows projects authorized to proceed under the old Race Neutral (RN) DBE program to proceed to contract award. As soon as possible but before June 2, 2009, local agencies must adopt and execute a new *California Department of Transportation DBE Program Implementation Agreement* (DBE Implementation Agreement). Upon execution of the new DBE Implementation Agreement, local agencies shall proceed under the new RC DBE Program. Under the new RC DBE Program, local agencies must incorporate the new race conscious contract specifications into all federal-aid consultant and construction contracts. These specifications are incorporated in the new contract boilerplate language referenced below.

Impacts to Federal-Aid Projects

- **ALL CONTRACTS AWARDED AFTER June 2, 2009 SHALL INCLUDE RC DBE REQUIREMENTS (i.e. contract goals, good faith efforts).**
- **Any project that receives Authorization to Proceed under the old RN DBE requirements must award the contract by June 2, 2009.**
- **Any Authorization to Proceed received under the old RN DBE requirements that does not meet the June 2, 2009 contract award deadline, shall be re-evaluated.**

Local agencies must resubmit their projects to Caltrans for approval to ensure compliance with the new RC DBE requirements prior to bid opening. Authorizations to Proceed will be withdrawn if projects do not comply with the new RC DBE requirements.

- **Contracts awarded after June 2, 2009, without meeting the new RC DBE requirements will be ineligible for federal funding.**
- **Local agencies' Requests for Authorization to Proceed for projects under the old RN DBE Program will continue to be received and processed subject to the preceding conditions.**
- **In submitting Requests for Authorization to Proceed for projects under the old RN DBE Program, the project sponsors need to be mindful of the minimum advertising period of three weeks, and the time it takes for bid opening and contract approval by their governing bodies.**
- **Requests for Authorization to Proceed with the new RC DBE requirements may be submitted for processing and have funds obligated/authorized before the District Local Assistance Engineer (DLAE) receives the new DBE Implementation Agreements; however, projects shall not be awarded prior to the approval of the new DBE Implementation Agreement by the DLAE.**
- **Existing federal-aid project contracts awarded with race neutral requirements shall continue under the old RN DBE Program.**

Contract Goals Limited to Underutilized Disadvantaged Business Enterprises (UDBEs)

Contract goals and the Good Faith Effort requirement are reinstated; however, they are limited to Underutilized DBEs (UDBEs). The findings from the Caltrans Availability and Disparity Study revealed statistically significant underutilization in four of the six groups presumed to be disadvantaged as defined by the Code of Federal Regulations, 49 CFR Part 26. The four groups are African American, Asian Pacific American, Native American and Women. Contract goals will be limited to these four groups of UDBEs. Use of the UDBEs above the contract goal and/or use of DBEs owned and controlled by Hispanic Males or Subcontinent Asian Males shall be reported and counted toward the Race Neutral portion of the local agencies' overall Anticipated Annual DBE Percentage Levels (AADPLs).

Old RN and New RC DBE Forms, Boilerplate Specifications

For contracts that will be advertised and awarded under the old RN DBE Program, the appropriate DBE forms will be available on the Local Assistance Website:

http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC.html

You may download the new DBE Implementation Agreement and consultant and construction contract boilerplate language from the Local Assistance website at:

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

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RTPAs

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For specific guidance on federal-aid consultant and construction contracts and access to the new DBE forms, please refer to the enclosures addressing consultant contracts and construction contracts.

Local Assistance Procedures Manual (LAPM)

The Division of Local Assistance will be issuing the changes to the LAPM. Until the LAPM changes are issued, the updated forms, guidance, and Frequently Asked Questions are available on the Caltrans, Division of Local Assistance (DLA) website:

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

Annual Anticipated DBE Percentage Levels (AADPL)

Local agencies are not required to resubmit previously approved 2008/2009 AADPLs to include segregated Race Conscious (RC) and Race Neutral (RN) components; **however, contract goals shall be calculated and placed on all contracts after the local agency has executed the new DBE Implementation Agreement.** The 2009/2010 AADPLs shall report segregated RC and RN anticipated percentage level components. Guidance for AADPL calculation under the new RC DBE Program is available at the Caltrans DLA website under "Announcements."

If you have questions, please refer to the Frequently Asked Questions posted on the Caltrans, DLA website: <http://www.dot.ca.gov/hq/LocalPrograms/> before contacting your DLAE.

Sincerely,



DENIX D. ANBIAH, Chief
Division of Local Assistance

Enclosures

c: Local Agency DBE Liaison Officers



Enclosure 2

Construction Contracts: Contracts to be advertised and awarded before the execution of the new DBE Implementation Agreement and before June 2, 2009, may proceed to advertise and award using Race Neutral boilerplate specifications and Race Neutral LAPM Exhibits 12-D, 15-A, 15-B, 15-G, 15-I, 15-L and 17-F. All other contracts shall use the new Race Conscious boilerplate specifications and the following new Race Conscious LAPM Exhibits currently located on the Caltrans Local Assistance website under “Announcements:”

- Exhibit 3-D: Request for Authorization to Proceed with Construction
- Exhibit 3-E: Request for Authorization to Proceed Data Sheet(s)
- Exhibit 12-D: PS&E Checklist
- Exhibit 15-A: Local Agency Construction Contract Administration Checklist
- Exhibit 15-B: Resident Engineer’s Construction Contract Administration Checklist
- Exhibit 15-G(1): Local Agency Bidder/Proposer UDBE Commitment (Construction Contracts)
- Exhibit 15-G(2): Local Agency Bidder/Proposer DBE Commitment (Construction Contracts)
- Exhibit 15-H: Good Faith Efforts Submittal
- Exhibit 15-I: Local Agency Bid Opening Checklist
- Exhibit 15-L: Local Agency Contract Award Checklist
- Exhibit 17-F: Final Report Utilization of DBE, First-Tier Subcontractors



Enclosure 1

Consultant Contracts: Contracts awarded prior to June 2, 2009, whose authorizations were granted prior to the adoption of the Race Conscious DBE Implementation Agreement may follow the Race Neutral DBE Program. All contracts awarded after June 2, 2009 must follow the Race Conscious DBE Program and use the following new Race Conscious LAPM Exhibits currently located on the Caltrans Local Assistance website under “Announcements.”

- Exhibits 3-A, 3-B, or 3-C: Request to Proceed with Preliminary Engineering, Right-of-Way, or Utility Relocation
- Exhibit 3-E: Request for Authorization to Proceed Data Sheet(s)
- Exhibit 10-C: Consultant Agreement Reviewers Checklist
- Exhibit 10-D: Consultant Agreement Outline
- Exhibit 10-I: Notice to Bidders/Proposers DBE Requirements and Instructions
- Exhibit 10-J: Standard Agreement for Subcontractor/DBE Participation
- Exhibit 10-O(1): Local Agency Bidder/Proposer UDBE Commitment (Consultant Contracts)
- Exhibit 10-O(2): Local Agency Bidder/Proposer DBE Commitment (Consultant Contract)
- Exhibit 17-F: Final Report Utilization of DBE, First-Tier Subcontractors