



*Expires – upon issuance of the LPP*

## **Review of the Disadvantaged Business Enterprise (DBE) Contract Goals and Good Faith Efforts – Pilot Study**

### **I. BACKGROUND**

On December 31, 2013, the California Department of Transportation (Caltrans) submitted specific steps and milestones to the Federal Highway Administration (FHWA), which would enable Caltrans to meet the overall DBE goal of 12.5% for the Federal Fiscal Year (FFY) of 2014. This was done in accordance with the 49 Code of Federal Regulations (CFR) 26.47(c), because Caltrans fell short of its overall DBE goal for FFY 2013. Caltrans proposed that the Division of Local Assistance (DLA) initiate a pilot study to review and approve all contract goals on construction contracts over \$2 million and consultant contracts over \$500,000. In addition, if the aforementioned contracts are awarded on the basis of a Good Faith Effort (GFE), DLA will review and provide feedback to the agency on the bidder/proposer's GFE prior to awarding the contract. DLA needs to take these steps because greater coordination of the contract goal setting is needed for Caltrans to meet its overall DBE goal. Also, a recent GFE process review showed that agencies consistently awarded contracts to the low bidder regardless of the adequacy of the GFE.

On March 6, 2014, FHWA responded to Caltrans' letter from December 31, 2013, and required that DLA track anticipated award dates for all projects, regardless of dollar limits, during the authorization phase. DLA will then follow up with the agency to obtain DBE data, i.e., commitments, award amounts and dates, and contract goals, if the agency is negligent in submitting this information at time of award. This will permit Caltrans to more accurately track overall DBE goal attainment and make adjustments to meet it.

### **II. POLICY**

For construction projects greater than \$2 million and consultant contracts greater than \$500,000, **authorized on or after October 1, 2014**, agencies will need their contract goals approved by DLA, prior to advertising, and, if awarded based on a GFE, have DLA review and provide feedback on the bidder/proposer's GFE prior to award. In addition, agencies will need to provide an Exhibit 9-D "*DBE Contract Goal Methodology*", and an anticipated award date with their "*Request for Authorization to Proceed*" for all contracts.

Consultant contracts that have a DBE contract goal as a percentage of the entire contract and were executed prior to October 1, 2014, are exempt from this Office Bulletin.

This policy will be analyzed for effectiveness 12-months from the issuance of this office bulletin. Results from the pilot study will assist in determining any changes to this policy.

### **III. PROCEDURE**

These procedures apply to all projects **authorized on or after October 1, 2014**.

Agencies must prepare and submit Exhibit 9-D with their "*Request for Authorization to Proceed*" for all construction and consultant contracts.

The agency will provide an anticipated award date on the "*Request for Authorization to Proceed*" form and, in turn, the District Local Assistance Engineer (DLAE) will enter the date into LP2000 (Local Programs 2000 database system). The Office of Policy Development and Quality



Assurance (OPDQA), within DLA, will frequently check these projects to ensure that DBE data from completed Exhibit 15-G “*Local Agency Bidder DBE Commitment (Construction Contracts)*” and Exhibit 10-O2 “*Consultant Contract DBE Information*” have been entered into LP2000, if the anticipated award date has passed. If a project’s anticipated award date has passed and no DBE data is present in LP2000, OPDQA will contact the DLAE, who will follow up with the agency and either revise the project award date or input the DBE data into LP2000.

For construction contracts greater than \$2 million and consultant contracts over \$500,000, the DLAE will send Exhibit 9-D to: [Dbegoal.gfe@dot.ca.gov](mailto:Dbegoal.gfe@dot.ca.gov). The OPDQA will perform an independent review of the contract goal calculation and return to the DLAE, either confirming or revising the agency’s contract goal. This process will take at least fifteen (15) business days of receiving the Exhibit 9-D from the District. The agency will then have an opportunity to discuss and resolve any differences in the respective goal calculations; however, the final decision rests with OPDQA. If these same projects are to be awarded based on a GFE, the agency will have OPDQA review and provide feedback prior to awarding the contract. The agency will send Exhibit 15-G or Exhibit 10-O2, Exhibit 15-H “*DBE Information-Good Faith Efforts*”, and supporting documentation to [Dbegoal.gfe@dot.ca.gov](mailto:Dbegoal.gfe@dot.ca.gov) for OPDQA to review and comment, with a copy to the DLAE. After receiving all the above material, the agency will allow OPDQA at least ten (10) business days to review the GFE. After reviewing the GFE, OPDQA will share their findings and observations with the agency. With this additional information, the agency will be able to make an informed decision as to the adequacy of the GFE prior to awarding the contract. Note: if the agency finds the GFE inadequate, the agency must offer the bidder/proposer an opportunity for administrative reconsideration before awarding the contract to another bidder/proposer, in accordance with 49 CFR 26.53(d). Failure of agencies to follow the procedures set forth in this paragraph will be considered an “Unrecoverable Project Deficiency”, in accordance with Chapter 20 “*Deficiencies and Sanctions*” of the Local Assistance Procedures Manual. This level of deficiency shall result in the withdrawal of all or a portion of the federal and/or state funds from the project.

**IV. APPLICABILITY/IMPACTS**

This Office Bulletin applies to all Federal-aid Local Assistance Transportation projects.

Recommended: **Original Signed By** \_\_\_\_\_ 9/24/2014  
Henry Wells, DBE Coordinator Date

Approved: **Original Signed By** \_\_\_\_\_ 9/24/2014  
Mark Samuelson, Chief Date  
Office of Policy Development and Quality Assurance

- Attachments:  
Exhibit 3-A, Request for Authorization to Proceed with Preliminary Engineering  
Exhibit 3-B, Request for Authorization to Proceed with Right of Way  
Exhibit 3-C, Request for Authorization to Proceed with Utility Relocation  
Exhibit 3-D, Request for Authorization to Proceed with Construction