

DBE Participation

1. The Consultant, subrecipient (the County), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR Part 26). To ensure equal participation of DBEs as provided in 49 CFR Section 26.5, the County specifies a contract goal for DBEs. The Consultant shall make work available to DBEs and allocate portions of the work consistent with available DBE subconsultants and suppliers.
2. The Consultant shall meet the DBE goal shown elsewhere in these special provisions or demonstrate its having made adequate good faith efforts to meet this goal. It is the Consultant's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.
3. All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies Consultant purchases from DBEs counts towards the goal in the following manner:
 - 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
 - 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
 - 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 Section 26.55 defines "manufacturer" and "regular dealer."
4. This Agreement is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Any Consultant who enters into a federally funded agreement will assist the County in a good faith effort to achieve California's statewide overall DBE goal.
5. The goal for DBE participation for this Agreement is listed in Exhibit G.2 Notice to Proposers DBE Information. Participation by a DBE Consultant or subconsultants shall be in accordance with information contained in Exhibit 10-O2: Consultant Contract DBE Commitment attached hereto and incorporated as part of the Agreement as Exhibit G.3. If a DBE subconsultant is unable to perform, the Consultant must make a good faith effort to replace them with another DBE subconsultant, if the goal is not otherwise met.
6. The Consultant can meet the DBE participation goal by either documenting commitments to DBEs to meet the Agreement goal, or by documenting adequate good faith efforts to meet the Agreement goal. An adequate good faith effort means that the Consultant must show that it 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 meet the DBE goal. If the Consultant has not met the DBE goal, the Consultant must then complete

1 and submit Exhibit 15-H: DBE Information – Good Faith Efforts to document its efforts to
 2 meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith
 efforts to meet the DBE goal.

3 **7. Contract Assurance.** Under 49 CFR Section 26.13(b):

- 4 a. The Consultant, subrecipient or subconsultant shall not discriminate on the basis
 5 of race, color, national origin, or sex in the performance of this contract. The
 6 Consultant shall carry out applicable requirements of 49 CFR Part 26 in the
 award and administration of federal-aid contracts.
- 7 b. Failure by the Consultant to carry out these requirements is a material breach of
 8 this contract, which may result in the termination of this contract or such other
 9 remedy as the recipient deems appropriate, which may include, but is not limited
 to:
- 10 b.1. Withholding monthly progress payments;
- 11 b.2. Assessing sanctions;
- 12 b.3. Liquidated damages; and/or
- 13 b.4. Disqualifying Consultant from future proposing as non-responsible

14 **8. Termination and Substitution of DBE Subconsultants.**

- 15 a. The Consultant shall utilize the specific DBEs listed to perform the work and
 16 supply the materials for which each is listed unless the Consultant or DBE
 17 subconsultant obtains the County's written consent. The Consultant shall not
 18 terminate or substitute a listed DBE for convenience and perform the work with
 19 their own forces or obtain materials from other sources without authorization from
 the County. Unless the County's consent is provided, the Consultant shall not be
 20 entitled to any payment for work or material unless it is performed or supplied by
 the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form,
 21 included in the Bid.
- 22 b. The County authorizes a request to use other forces or sources of materials if the
 Consultant shows any of the following justifications:
- 23 b.1. Listed DBE fails or refuses to execute a written contract based on plans
 and specifications for the project.
- 24 b.2. The County stipulated that a bond is a condition of executing the
 subcontract and the listed DBE fails to meet the County's bond
 25 requirements.
- 26 b.3. Work requires a consultant's license and listed DBE does not have a valid
 license under Contractors License Law.
- 27 b.4. Listed DBE fails or refuses to perform the work or furnish the listed
 28 materials (failing or refusing to perform is not an allowable reason to
 remove a DBE if the failure or refusal is a result of bad faith or
 discrimination).

- 1 b.5. Listed DBE's work is unsatisfactory and not in compliance with the
2 contract.
- 3 b.6. Listed DBE is ineligible to work on the project because of suspension or
4 debarment.
- 5 b.7. Listed DBE becomes bankrupt or insolvent.
- 6 b.8. Listed DBE voluntarily withdraws with written notice from the Contract
- 7 b.9. Listed DBE is ineligible to receive credit for the type of work required.
- 8 b.10. Listed DBE owner dies or becomes disabled resulting in the inability to
9 perform the work on the Contract.
- 10 b.11. The County determines other documented good cause.
- 11 c. The Consultant shall notify the original DBE of the intent to use other forces or
12 material sources and provide the reasons and provide the DBE with 5 days to
13 respond to the notice and advise the Consultant and the County of the reasons
14 why the use of other forces or sources of materials should not occur.
- 15 d. The Consultant's request to use other forces or material sources must include:
- 16 d.1. One or more of the reasons listed in the preceding paragraph.
- 17 d.2. Notices from the Consultant to the DBE regarding the request.
- 18 d.3. Notices from the DBEs to the Consultant regarding the request.
- 19 e. If a listed DBE is terminated or substituted, the Consultant must make good faith
20 efforts to find another DBE to substitute for the original DBE. The substitute DBE
21 must perform at least the same amount of work as the original DBE under the
22 contract to the extent needed to meet or exceed the DBE goal.

23 **9. Commitment and Utilization**

- 24 a. The County's DBE program must include a monitoring and enforcement
25 mechanism to ensure that DBE commitments reconcile to DBE utilization.
- 26 b. The County shall request the Consultant to:
- 27 b.1. Notify the County's contract administrator or designated representative of
28 any changes to its anticipated DBE participation
- b.2. Provide this notification before starting the affected work
- b.3. Maintain records including:
- Name and business address of each 1st-tier subconsultant
 - Name and business address of each DBE subconsultant, DBE vendor, and DBE
trucking company, regardless of tier

- 1 • Date of payment and total amount paid to each business (see Exhibit 9-F
2 Monthly Disadvantaged Business Enterprise Payment)
- 3 c. If the Consultant is a DBE Consultant, it shall include the date(s) of work
4 performed by its own forces and the corresponding value of all such work. If a
5 DBE is decertified before completing its work, the DBE must notify Consultant in
6 writing of the decertification date. If a business becomes a certified DBE before
7 completing its work, the business must notify the Consultant in writing of the
8 certification date. The Consultant shall submit the notifications to the County. On
9 work completion, the Consultant shall complete a Disadvantaged Business
10 Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the
11 form to the County within 30 days of contract acceptance.
- 12 d. Upon work completion, the Consultant shall complete Exhibit 17-F Final Report –
13 Utilization of Disadvantaged Business Enterprises (DBE), First-Tier
14 Subcontractors and submit it to the County within 90 days of contract
15 acceptance. The County will withhold \$10,000 until the form is submitted. The
16 County will release the withhold upon submission of the completed form. In the
17 County's reports of DBE participation to Caltrans, the County must display both
18 commitments and attainments.
- 19 10. **Eligibility** - A DBE is only eligible to be counted toward the Agreement goal if it performs a
20 commercially useful function (CUF) on the Agreement. CUF must be evaluated on an
21 agreement-by-agreement basis. A DBE performs a Commercially Useful Function (CUF)
22 when it is responsible for execution of the work of the Agreement and is carrying out its
23 responsibilities by actually performing, managing, and supervising the work involved. To
24 perform a CUF, the DBE must also be responsible, with respect to materials and supplies
25 used on the Agreement, for negotiating price, determining quality and quantity, ordering the
26 material and installing (where applicable), and paying for the material itself. To determine
27 whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry
28 practices, whether the amount the firm is to be paid under the Agreement is commensurate
with the work it is actually performing, and other relevant factors.
11. A DBE does not perform a CUF if its role is limited to that of an extra participant in a
transaction, Agreement, or project through which funds are passed in order to obtain the
appearance of DBE participation. In determining whether a DBE is such an extra participant,
examine similar transactions, particularly those in which DBEs do not participate.
12. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the
total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion
of the work of the Agreement than would be expected on the basis of normal industry
practice for the type of work involved, it will be presumed that it is not performing a CUF.
13. The Consultant shall maintain records of materials purchased or supplied from all
subcontracts entered into with certified DBEs. The records shall show the name and
business address of each DBE or vendor and the total dollar amount actually paid each
DBE or vendor, regardless of tier. The records shall show the date of payment and the total
dollar figure paid to all firms. DBE Consultants shall also show the date of work performed
by their own forces along with the corresponding dollar value of the work.

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14. If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify the Consultant in writing with the date of certification. Any changes should be reported to County’s Contract Administrator within thirty (30) calendar days.

15. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the Consultant shall complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the County.

EXHIBIT 10-I NOTICE TO PROPOSERS DBE INFORMATION

(Federally funded projects only)

The Agency has established a DBE goal for this Contract of _____

1. TERMS AS USED IN THIS DOCUMENT

- 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 Title 49, Code of Federal Regulations (CFR), Part 26.5.
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Contracts financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Consultant must ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

3. SUBMISSION OF DBE INFORMATION

If there is a DBE goal on the contract, Exhibit 10-O1 *Consultant Proposal DBE Commitment* must be included in the Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. All DBE participation will be counted towards [meeting](#) the contract goal; therefore, all DBE participation shall be collected and reported.

Exhibit 10-O2 *Consultant Contract DBE Information* must be included in [best qualified consultant’s executed consultant contract](#). Even if no DBE participation will be reported, the successful proposer must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE proposer not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
 - 1. The proposer is a DBE and will meet the goal by performing work with its own forces.
 - 2. The proposer will meet the goal through work performed by DBE subconsultants, suppliers or trucking companies.
 - 3. The proposer, prior to proposing, made adequate good faith efforts to meet the goal.

- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The proposer shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the bid/cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Contract toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance.
- B. Access the CUCP database from the Department of Transportation, Office of Civil Rights [website](#)
 - 1. Click on the link titled Disadvantaged Business Enterprise;
 - 2. Click on Search for a DBE Firm link;
 - 3. Click on [Access to the DBE Query Form](#) located on the first line in the center of the page.

Searches can be performed by one or more criteria. Follow instructions on the screen.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Contract and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT**CONSULTANT SECTION**

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
- 21. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 22. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 23. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 24. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 25. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.