



Expires – Upon Issuance of LPP

Disadvantaged Business Enterprise (DBE) Contract Goal Calculation and Good Faith Efforts (GFE) Review Procedures

NOTE: This Office Bulletin supersedes DLA-OB 14-06

I. BACKGROUND

On September 24, 2014, Caltrans Division of Local Assistance (DLA) issued Office Bulletin (OB) #14-06 “Review of the DBE Contract Goals and Good Faith Efforts – Pilot Study.” The Pilot Study required Caltrans to review and approve all contract goals on construction contract estimates over \$2 million and consultant contract estimates over \$500,000. If the aforementioned contracts are awarded on the basis of a GFE, Caltrans will review and provide feedback to the local agency on the bidder/proposer’s GFE prior to awarding the contract.

This office bulletin implements Exhibit 9-D: DBE Contract Goal Methodology, setting contract goals and incorporates OB #14-06 by:

- Incorporating DLA-OB 14-06 pilot program as a permanent process
- Updating Section 9.7 Disadvantaged Business Enterprise (DBE) Participation on the Contract and Section 9.8 Good Faith Efforts (GFE) of the Local Assistance Procedures Manual (LAPM)
- Providing simplified responsibilities for all stakeholders

II. POLICY

Agencies will need to provide Exhibit 9-D “DBE Contract Goal Methodology” to their DLAE for review and concurrence for all contracts.

For construction contract estimates greater than \$2 million and consultant contract estimates greater than \$500,000, the DLAE will email Exhibit 9-D in Microsoft Excel format to HQ DLA: dbegoal.gfe@dot.ca.gov to have the contract goal approved by Caltrans prior to advertising. If these contracts are awarded based on a GFE, have Caltrans review and provide feedback on the bidder/proposer’s GFE prior to award. Local agencies will have an opportunity to discuss and resolve any differences in the respective goal calculations; however, the final decision rests with Caltrans.

The District Local Assistance Engineers will conduct a cursory review of Exhibit 9-D for consultant contract estimates ≤ \$500,000 and construction contract estimates ≤ \$2,000,000. The DLAE’s will not review GFEs as these will be administered directly by local agencies as subrecipients of federal-aid contracts consistent with 49 CFR 26.53.

A copy of the approved Exhibit 9-D must be kept in the agency file.



III. PROCEDURE

New/updated sections have been added to Sections 9.7 and Sections 9.8 of the LAPM included at the end of this Office Bulletin.

IV. APPLICABILITY/IMPACTS

This Office Bulletin applies to **all** federal-aid contracts and simplifies responsibilities for all stakeholders.

Recommended: Original Signature By 11/22/2019
Wenyi Long, Date
Local Programs Disadvantaged Business Enterprise
(DBE) Coordinator

Approved: Original Signature By 11/22/2019
Felicia Haslem, Acting Chief Date
Office of Guidance & Oversight

- Attachments: (1) Exhibit 9-D: Contract Goal Methodology
(2) Exhibit 9-E: Sample Local Agency Good Faith Effort Review
(3) Exhibit 15-H: Proposer/Contractor Good Faith Efforts

**[The following sections are replaced and added in
Section 9.7: DBE Participation on the Contract]**

Participation Opportunities

The local agency should structure its contracts [and cost estimates by task](#) to provide opportunities for DBE participation. Participation by DBEs is possible during the Preliminary Engineering, Environmental, Final Design, Right of Way, and Construction phases of the project, and includes work as [lead consultants](#), [prime contractors](#), sub-consultants, subcontractors, suppliers, vendors and truckers.

DBE Contract Goals

All federal-aid contracts that have subcontracting opportunities must have a DBE goal set. This includes, but is not limited to: [construction](#), [consultant services such as project specific Architectural & Engineering \(A&E\)](#), and [master on-call A&E contracts](#). A DBE contract goal is a percentage of the total contract amount that is expected to be performed by certified DBE firms. The DBE contract goal will vary depending on the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

The contract goal may be zero [in situations such as](#) extremely limited subcontracting opportunities, the lack of [certified DBEs in the District for the work to be performed](#), or other reasons. [Documentation is required when a local agency has determined that a zero percent DBE contract goal is appropriate.](#)

Some contracts, such as [Emergency Opening](#), [Sole-source](#), [Nonprofit](#) or [Force Account](#) do not require a DBE goal. In these cases, [there is no contract goal \(different from zero percent goal\).](#)

Setting the DBE Contract Goal

DBE contract goals are established to encourage more participation of DBEs for federal-aid transportation contracts. The bullets below provide a summary guidance of how to set the DBE contract goal. For a detailed set of instructions and a template example, please refer to [Exhibit 9-D: DBE Contract Goal Methodology](#).

- The project analysis starts with finalizing the cost estimate and determining potential sub-contractable items of work in the Exhibit 9-D: DBE Contract Goal Methodology template.
- The local agency must consider the type of work involved (Work Category Code), location of the work (by Caltrans District number), and the potential DBEs listed in the database. For each work category code, determine the number of available DBE subcontractor / subconsultants by conducting a search in the California Unified Certification Program (CUCP) database geographically by Caltrans district only. Use the district where the work will take place.
- Determine the DBE Work Factor for each task:
 - If the number of available DBE subcontractors or sub-consultants is 7 or more, use 100 percent.
 - If there are less than 7 DBEs available: for consultant contracts, use 0 Work Factor; for construction projects, determine whether or not there is a component of trucking or material supply, and apply a 10 or 12 percent DBE Work Factor, respectively, otherwise use 0.



Submitting Exhibit 9-D

All federal-aid contracts must have an [Exhibit 9-D: DBE Contract Goal Methodology](#) submitted to the DLAE. The following are responsibilities and a flowchart for local agencies, DLAEs, and HQ DLA.

Local Agency Responsibilities

- Local agencies must submit an [Exhibit 9-D, DBE Contract Goal Methodology](#) in Microsoft Excel format to their DLAE for all federal-aid contracts, including master on-call A&E contracts, prior to advertisement and/or with the request for authorization (RFA) package as applicable.
- Local agencies may not advertise the contract before receiving DLAE feedback on the DBE goals and notification from the DLAE that the authorization to proceed (E-76) has been issued.
 - For construction contract estimates greater than \$2 million and consultant contract estimates greater than \$500,000, the DBE goal will need to be reviewed and approved by Caltrans. Local agencies will have an opportunity to discuss and resolve any differences in the respective goal calculations; however, the final decision rests with Caltrans.

DLAE Responsibilities

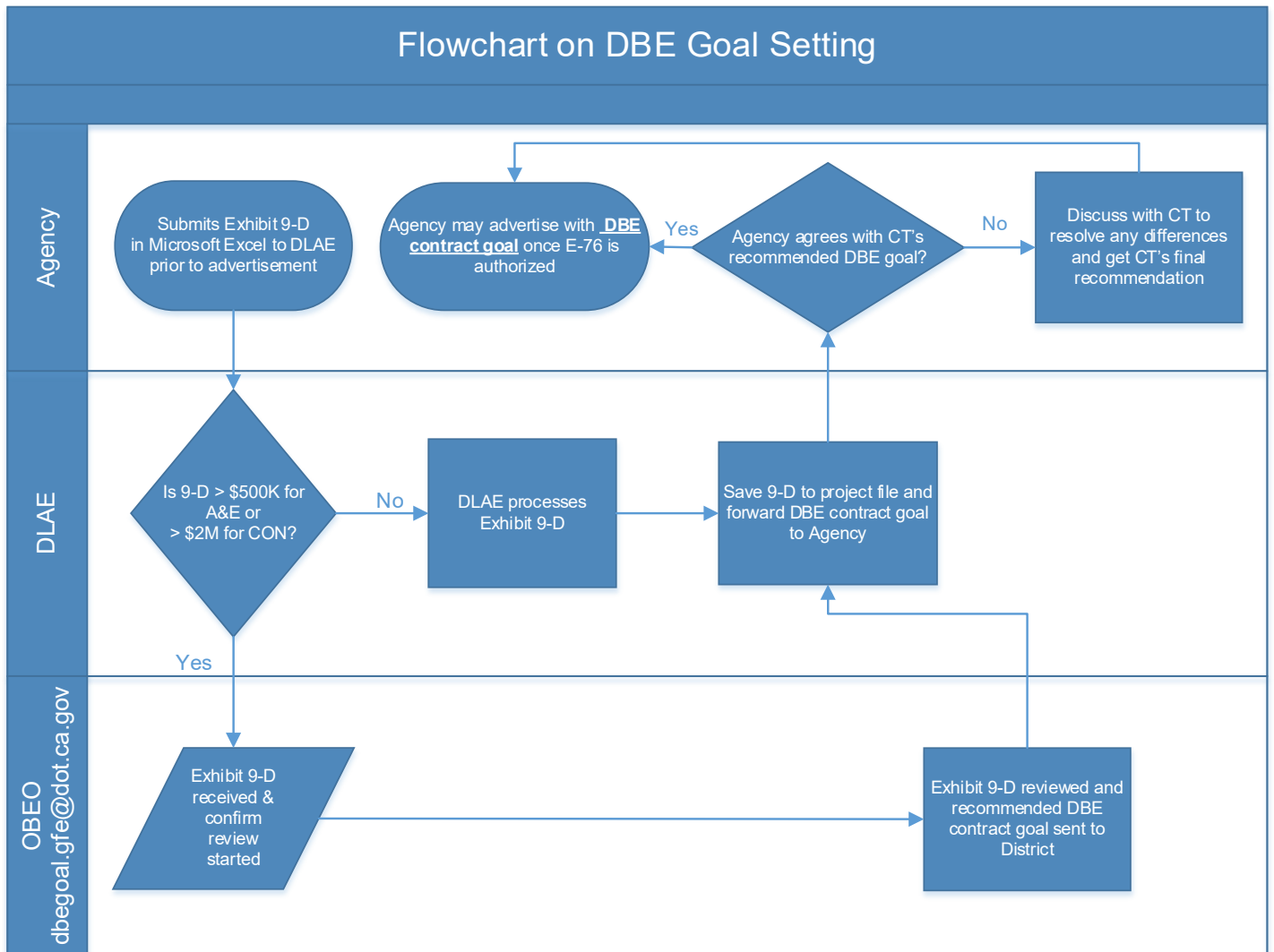
- For construction contract estimates greater than \$2 million and consultant contract estimates greater than \$500,000, e-mail the [Exhibit 9-D, DBE Contract Goal Methodology](#) in Microsoft Excel format to HQ DLA: DBEgoal.GFE@dot.ca.gov.
 - Once the [Exhibit 9-D, DBE Contract Goal Methodology](#) has been reviewed by the Office of Business & Economic Opportunity (OBEO), send a confirmation e-mail to the local agency with the recommended DBE contract goal.
- For construction contract estimates less than or equal to \$2 million and consultant contract estimates less than or equal to \$500,000, conduct a cursory review of the Exhibit 9-D and send an email to the local agency to confirm the DBE contract goal.

DLA Responsibilities

The following applies to DBE goal setting for construction contract estimates greater than \$2 million or consultant contract estimates greater than \$500,000:

- Send confirmation to the DLAE that Exhibit 9-D is being processed.
- After processing, reply to the DLAE with the recommended DBE contract goal.
- If the agency disagrees with the DBE contract goal, review the reasoning and make a decision if the goal needs to be adjusted.

It will take 15 business days to review the Exhibit 9-D after receipt from the District. If there is no response from DLA after 15 days, the DLAE has the discretion to move forward.



[The following section is added to Section 9.8: Good Faith Efforts]

Submitting the GFE and Supporting Document for Review

For construction contracts less than or equal to \$2 million and consultant contracts less than or equal to \$500,000, the agency must perform the GFE review if DBE goal is not met.

For construction contracts greater than \$2 million and consultant contracts greater than \$500,000 that had their DBE goal approved by Caltrans, if the low bidder or the most qualified consultant did not meet or exceed the DBE contract goal, the local agency must submit the GFE documentation to their DLAE for review.

The following are responsibilities and a flowchart on Good Faith Effort Review for local agencies, DLAEs, and DLA.

Local Agency Responsibilities

- The local agency must obtain, complete, and review all of the following documentation prior to determining if the low bidder or the most qualified consultant made a GFE:
 - A bid tabulation summary sheet such as included in [Exhibit 15-D: Bid Tabulation Summary Sheet](#) or [Exhibit 10-O1: Consultant Proposal DBE Commitment](#).
 - All bidders' [Exhibits 15-G: Construction Contract DBE Commitment](#) or [Exhibit 10-O1: Consultant Proposal DBE Commitment](#).
 - All bidders' [Exhibit 15-H: Proposer/Bidder Good Faith Efforts](#) or other documentation that all bidders' submit in lieu of Exhibit 15-H. If bidders did not submit GFE documentation within five (5) days after bid opening, it should be noted in [Exhibit 9-E: Local Agency Good Faith Effort Review](#).
 - [Exhibit 9-E: Local Agency Good Faith Effort Review](#).
- For construction contracts less than or equal to \$2 million and consultant contracts less than or equal to \$500,000, the agency has responsibility to perform the GFE review.
- For construction contracts greater than \$2 million and consultant contracts greater than \$500,000, if the low bidder or the most qualified consultant did not meet or exceed the DBE contract goal, the local agency must submit the above GFE documentation to their DLAE **prior to awarding a contract or starting the negotiation**.
 - Local agencies **may not** award a contract to the low bidder or negotiate with the most qualified consultant without first receiving a memorandum from their DLAE that Caltrans has determined that they made a GFE.
 - 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 re-evaluation:
 - 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.



DLAE Responsibilities

- For construction contracts greater than \$2 million and consultant contracts greater than \$500,000, e-mail all completed GFE documentation including the local agency's bid summary (Exhibit 15-D or Exhibit 10-O1), DBE commitments (Exhibit 15-G or Exhibit 10-O1), the bidders' GFEs (Exhibit 15-H), and the local agency's GFE evaluation (Exhibit 9-E) to DBEgoal.GFE@dot.ca.gov.
- Communicate the outcome of Caltrans GFE review to local agencies.

DLA Responsibilities

The following applies to the GFE evaluation for construction contracts greater than \$2 million and consultant contracts greater than \$500,000:

- After receiving a complete GFE package from the DLAE, reply to the DLAE when evaluation starts on the GFE review.
- Once the GFE review has been finished, reply to the DLAE with Caltrans' GFE review conclusion in a memorandum.

The process will take 15 business days after receipt of the GFE package from the District. If there is no response from DLA after 15 days, the DLAE has the discretion to move forward.

