



## Civil Rights Academy: Module 1

February 1-2, 2023

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### Questions, Answers & Links

Materials and video recording for this presentation are located on the Sacramento State College of Continuing Education's portal, through the Cooperative Training Assistance Program (CTAP) [website](#).

Specific questions regarding this module, please contact: [dla@dot.ca.gov](mailto:dla@dot.ca.gov)

**Q: Is a DBE goal required to be recalculated for each contract or is the one that we do every three years applying to each contract during that period?**

A: The Statewide goal is set every 3 years by the Disparity Study. The Contract goal is calculated depending on the available subcontract work and the other variables Wenyi mentioned in his presentation.

**Q: Do we only need to search the new database now?**

A: Yes, the old CUCP database is being shut down once all the data is merged to the new one.

**Q: Do we only need to search the new database now? When will all the data be merged?**

A: OCR is working on that.

**Q: What if most of the work is to be performed by the prime based on our scope?**

A: If the scope of work does not include work that can be subcontracted, particularly to DBE firms, the goal can be set low or be justified to have zero goal.

**Q: Does it matter where the DBE firm is located? Assuming work is located in Southern California and the DBE firm is located in Northern California does it make any difference?**

A: When you search for DBE firms to set the DBE goal, you only search for the DBE firms within your District.

**Q: When we submit the 80% factor our goals are being adjusted to 90% work factor, is this normal?**

A: It has been the practice for some time when local agencies calculate their DBE goal, local agencies use a reduction factor of 80%. But when the calculation is sent to OCR to review, OCR can adjust the reduction factor from 80% to 100% on a contract by contract, District by District basis, two DLA Blogs were published to explain this in 2021 and 2022.

**Q: Is Exhibit 9-E new form to complete for GFE?**

A: No, Exhibit 9-E is an existing form.

**Q: Can we ask for 15-H at the time the proposals are due?**

A: Yes, if you ask every consultant to do the same thing.

**Q: GFE Package to the DBE mailbox optional or required?**

A: It is required for consultant contract > \$500,000, and for construction contract > \$2,000,000

**Q: If Caltrans determines the GFE is not sufficient, but the local agency does and chooses to award, does that put any funding at risk if there was an audit?**

A: If Caltrans determines that the GFE is not adequate and differ from Local agency's initial evaluation, the Local Agency shall take Caltrans feedback into consideration and reevaluate the GFE. If after the reevaluation, the Agency still thinks that the GFE is sufficient, the Agency can go ahead to award the contract.

**Q: If you set goal for your procurement, and a consultant submits their offer without a goal or GFE, do I still have to give the consultant a hearing, or are they non-responsive?**

A: Yes, if they do not submit a DBE goal and/or GFE package, they are non-responsible and may be disqualified.

**Q: Administrative Reconsideration Hearing, is this optional? May the Local Agency make determination if the GFE was adequate or inadequate?**

A: If a contractor does not meet the established DBE goal, and the GFE is not adequate, the Agency must invite the low bidder to an administrative reconsideration hearing before moving to the next low bidder. For a consultant contract > \$500,000, or construction contract > \$2,000,000, the Agency must send the GFE package to HQ for review. The Agency must take Caltrans GFE review feedback into consideration and make the final decision on whether the GFE is adequate.

**Q: What is the DBE goal was set based on estimated contract amount of <\$2M but the actual low bid came in higher at >\$2M?**

A: If the estimated contract amount is less than \$2M, District will review and approve the DBE goal calculation. If after the bid, the low bidder is more than \$2M, and if the low bidder does not meet the DBE goal, then the GFE package needs to be sent to DLAE, and the DLAE will forward to HQ for OCR to review.

**Q: Is the required contract language in accordance with the latest LAPM 2023?**

A: Some of them is to be published in March, 2023.

**Q: Following method 3, the jurisdiction can hold the 5% retainage until NOC f a project, but the Prime contractor will need to pay retainage within seven (7) days of subconsultant invoicing so long as work completed, is this correct?**

A: The contractor needs to pay the subcontractor within 7 days after receiving the final payment for the work that is satisfactorily finished.

**Q: What is the process if selected DBE sub loses DBE Certification prior to completing work. Does the DBE goal still stay the same for the Prime?**

A: At this time, FHWA allows DBE firms who are de-certified during the performance of a project to be counted towards the project DBE goal/commitment. However, this may change soon as FHWA has proposed new rules and we anticipate them to finalize their adoption this year (2023).

**Q: During the bidding and award process the contractor met the DBE goals and submitted all the DBE documentation and were approved by both the local agency and Caltrans. After award, the contractor's DBE subcontractor no longer can do the work (due to DBE subcontractor closing to unforeseen circumstances). Please provide a guidelines/option how the main contractor can proceed with DBE work? How long is the typical process? What option does the main contractor have if new DBE firm proposed work cost is significantly higher than the original DBE subcontractor?**

A: The contractor shall follow the termination and replacement procedures in the LAPM to terminate the unavailable DBE and replace with another DBE and make good faith efforts to meet or exceed the DBE commitment.

**Q: If the DBE goal is 0%, is DBE contract language still required in the contract?**

A: Even if the DBE goal is zero, there may be DBE firms perform works for the contract. Therefore, the DBE contract language is needed.

**Q: Must a contract be formally amended when a DBE subcontractor is replaced, or is collection of appropriate forms and written documentation in the Procurement file sufficient?**

A: To replace a DBE subcontractor, the prime must submit a written request explaining the reasoning behind, for the local agencies' review and consideration. Please refer to Exhibit 12-G, section E, "Termination and Substitution of DBE Subcontractors," for examples of acceptable reasons, and detailed substitution process.

**Q: If agencies use B2Gnow software for contract compliance, including tracking and monitoring prompt payment, are agencies still required to use the new DBE running Tally form just mentioned?**

A: If the B2Gnow has the function of Running Tally, 9-F or 9-P will not be required.

**Q: If selected DBE Sub loses their DBE Certification, can that sub be removed from the contract by Prime Contractor?**

A: At this time, FHWA allows DBE firms who are de-certified during the performance of a project to be counted towards the project DBE goal/commitment. However, this may change soon as FHWA has proposed new rules and we anticipate them to finalize their adoption this year (2023).

**Q: If the agency is using an alternative contracting method such as Construction Management/General Contractor (CM/GC), is it acceptable to set the DBE goal at the various phases of the project after award to the Prime? An example would be the advertisement of the Pre-Construction Services would have a DBE goal, the major construction portions of the project will receive the DBE goals upon completion of the SOW for each phase, is this acceptable? Does this meet the DBE requirements of the Local Assistance office?**

A: Better to follow Caltrans CMGC procedure for Capital projects.

**Q: If DBE goal is approved at 0%, must we still collect 10-01 and Good Faith Effort forms from the Consultant? Also, must this contract be included in the Local Agency's DBE reporting?**

A: Exhibit 10-02 must be included in the executed consultant contract whether or not there is a DBE goal. The final DBE utilization form 17-F shall also be reported when closing a project.

**Q: If the DBE subcontractor loses its certification and the Consultant has procured a replacement DBE and provided new required forms, must that replacement be approved by DLA before we amend the contract? Is this dependent upon total Contract amount? Is there a requirement/time requirement for reporting the change of DBE, or amending the contract?**

A: Any termination and replacement of DBE firms must get Local Agency's written approval. DLA does not review or approve the termination or replacement of DBE firms. For detailed procedures, please see the Office Bulletin that will be published in March,2023.

**Q: What is the penalty for omitting required OCR review prior to a GFE award?**

A: Per Office Bulletin 14-06, it could cause the Agency to lose the Federal fund.

**Q: How should "software subscription and maintenance agreements" be handled when they go to RFP? Do we need to calculate a DBE Goal, and have it approved?**

A: As long as a contract has federal funding, and the contract has subcontract opportunities, then DBE goal and DBE requirements are needed.

**Q: When will the CUCP database merge be complete? (Anticipated date?)**

A: As of now, we have not heard from the OCR an exact date.

**Q: A contractor that performs work that was to be performed by a DBE firm, without the Local Agencies approval, I hear they are not to be paid. Invoice will not be paid. I am concerned there will be legal action by the contractor for not being paid.**

A: A notice of the violation should be sent to the Prime and DBE firm involved. The notice should include findings (evidence of the violation) and the penalties accrued. This notice will refer the contract language, Standard Specifications, LAPM, CFR, and any other policy citations required to support the findings. It is within the right of the awarding agency to take a penalty for illegal replacement (work not performed by the listed DBE).

**Q: You mention that a new 9J CUF form will be released. Our agency has an electronic CUF form that is through the B2GNow system. Will this suffice or are we required to go back to a manual process?**

A: Follow the manual process.

**Q: If the contractor "accidentally" does the work that the DBE was supposed to be doing, can he have the DBE do other work on the job to meet the commitment? If they do meet the commitment, can the contractor get paid for the work that they "accidentally" did?**

A: No, they must be penalized the amount of work completed that was committed to the DBE firm. They must either increase the work of the original DBE or find other bid items the Prime intended to self-perform that can be subcontracted to a new DBE firm (within the allowable dollar value per PCC 4100).

**Q: DBE goal is difficult to set when working on As Needed Environmental Contracts since the work is not known at the time of contract issuance. Individual task orders may be too small to divide out work to meet a specific DBE goal. This makes it difficult to meet the overall goal.**

A: Sometimes it is difficult to set a DBE goal because scope of work is not too clear, that is understandable. However, if you have a scope of work, it should be feasible to calculate a DBE goal.

**Q: Is there an expected turn-around time for DBE goal approval submitted by the local agency when using an RFP for a consultant agreement? This can significantly delay important or time sensitive projects as sometimes it take can several weeks to receive approval.**

A: The maximum for OCR to review is 15 business days, it usually takes less than that.

**Q: Can there be a DBE training specifically for As Needed Environmental Services?**

A: No, we don't have a training specifically for environmental services.

**Q: What is the turnaround on review of the GFE form? Consultant services solicitation, not low-bid construction project.**

A: OCR usually finished review within 15 business days.

**Q: Does the DBE revisions include withholding payment to the Prime if a DBE CUF has not been completed?**

A: It has been the policy that if CUF is not performed, the DBE work can't be counted as DBE credit, meaning that the payment can be denied for the part of work the CUF is not performed.

**Q: For CONSULTANT contracts is the prompt payment 7 days or 15 days?**

A: 15 days

**Q: How long will agencies be given to get in compliance with the release of the upcoming Office Bulletin**

A: It is for new projects that advertised after the OB is published.

**Q: I just wonder why are there so many updates throughout the year? TO me, it would make sense to do an annual or quarterly update, but I don't have the bigger picture.**

A: The changes have been in the works for the last 2+ years but have only recently been finalized and publishing can be on different schedules.

**Q: What has been updated in the 9B?**

A: The updated 9-B allows different withholding method for professional services and construction contracts.

**Q: When FHWA approves the new Caltrans DBE Program Plan, will all local agencies be required to submit a new LAPM Exhibit 9-A?**

A: The Exhibit 9-A will be revised accordingly after the new Caltrans DBE Program Plan is published. Local Agencies will be required to submit the new 9-A after it is published.

**Q: Is it form 10-I or 10-1?**

A: 10-i

**Q: If all federal aid contracts require a DBE goal, why does the Form 9A allow an agency to select Race Neutral means? What does Race Neutral means?**

A: Caltrans expects SUB-RECIPIENT to meet the maximum feasible portion of Caltrans Overall Statewide Annual DBE Goal through race-neutral means of facilitating DBE participation. Race neutral DBE participation includes when a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

**Q: The Instruction tab in Exhibit 9-D states Exhibit 10-C is also required. This form is not available on the LAPM Forms website. Can you clarify if this form is required, and if so, where do we find it?**

A: Submitting the form is still required for all A&E contracts and the process has not changed. However, the form is no longer named "Exhibit 10-C". It is now "A&E Consultant Contract Form" and is accessed via <https://dla.dot.ca.gov/fmi/webd>.

**Q: What is a minor project?**

A: Minor projects are projects addressing low-cost transportation needs. Per Caltrans Minor Program guidelines, as of January 26, 2022, the minor B project limit was \$388k, whereas Minor A limit is \$1.25 mil.

**Q: Is the 30% of work required of the Prime regardless of having DBEs or not?**

A: Yes, per section 16.7, "Subcontractors," of the LAPM, the prime contractor must perform at least 30% of the total contract work, or the % specified in the Special Provisions, whichever is greater using its own forces, regardless of the DBE commitment.

**Q: Do the same Caltrans DBE guidelines apply to Federal Aviation Administration DBE program?**

A: LAPM does not apply to Federal Aviation Administration DBE program?

Q: What "corrective action" is expected of the prime and the DBE if CUF evaluation finds violations?

A: "Corrective action" means that the DBE must conform to the CUF requirements within the specific time window after being evaluated as not performing CUF. Otherwise the part of work that CUF is not performed may be denied for payment.

**Q: Is there a Caltrans document that summarizes the different DBE rules for transit, planning, local assistance, and LCO projects or plans? (I know there is for Local Assistance A&E vs non-A&E and capital/construction but trying to figure out how different those rules are from what is required by other CT Divisions.)**

A: I believe the Caltrans DBE Program Plan identifies duties for different Divisions.

**Q: Can you just confirm, that for contracts less than 1M, are not required to submit the 10-C.**

A: The A&E Consultant Contract form (formerly 10-C) is not required for non-A&E contracts, including non-infrastructure contracts. The A&E Consultant Contract form is required for all A&E contracts, regardless of dollar amount.

**Q: 10-01 & 10-02 are Office of Regional Planning Forms. Local Assistance has its Own Forms (ADM-0369& o227F) ones should be used?**

A: No, Exhibit 10-O1 and 10-O2 are DLA forms.

**Q: For project completion, do we complete Exhibit 17-F and Exhibit 17-F1?**

A: Exhibit 17-F is for regular A&E and construction projects, Exhibit 17-F1 is for A&E on call contracts.

**Q: How do we subscribe to Office Bulletin Draft Notifications?**

A: Subscribe to the Caltrans Local Assistance Email list to receive updates to this blog and news related to the State and federal-aid process and our publications. <https://www.localassistanceblog.com/>

**Q: Why isn't there a standard DBE % just required for A&E contracts?**

**We hire on-call consultants and then use them for both federal and non-federal projects. We don't**

**know what type of projects they will be used for. So, what's a good % DBE participation to require in order to be able to use those on-call consultants?**

A: Contract DBE goal needs to be calculated based on the scope of work, subcontract opportunities, location of work, and available DBE firms. Each contract will have different DBE goal.

**Q: If a project is being started with local or state-only funds, but an agency might receive fed funds in the future, can they follow DBE procedures to procure consultants or does Prop 209 prohibit that?**

A: At the time of preparing contract, if there is only state fund, then there is no DBE requirement.

**Q: 10-01 & 10-02 are Office of Regional Planning Forms. Local Assistance has its Own Forms (ADM-0369& o227F) ones should be used?**

A: No, Exhibit 10-O1 and 10-O2 are DLA forms.

**Q: For CONSULTANT contracts is the prompt payment 7 days or 15 days?**

A: For consultant contract, the prompt progress payment requirement is within 15 days.

**Q: For the minimum percentage is 30% for prime contractor's total contract work?**

A: Yes, per section 16.7, "Subcontractors," of the LAPM, the prime contractor must perform at least 30% of the total contract work, or the % specified in the Special Provisions, whichever is greater.

### Important Links

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Division of Local Assistance (DLA) Home Page: <https://dot.ca.gov/programs/local-assistance>

Email Contact DLA: [Caltrans.DLA@dot.ca.gov](mailto:Caltrans.DLA@dot.ca.gov)

District Local Assistance Engineers Contacts: <https://dot.ca.gov/programs/local-assistance/other-important-issues/local-assistance-contacts>

DLA Blog – News & Office Bulletins: <https://www.localassistanceblog.com>

Cooperative Training Assistance (CTAP) Website: <https://ca-ctap.org>

Local Technical Assistance Program (LTAP) Website: <https://californialtap.org>

UC Berkeley Tech Transfer: <https://www.techtransfer.berkeley.edu/>