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***eInsight* Article:
New Caltrans Race Conscious DBE Program**

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History:

Since May 2006, in response to a Ninth Circuit appellate court decision, Caltrans utilized a Race Neutral methodology with regard to its Disadvantaged Business Enterprise (DBE) Program for federal aid transportation (DOT) projects and required local agencies to agree to implement Caltrans' DBE program (which eliminated the long-standing use of contract goals and good faith efforts).

In 2007, Caltrans commissioned a disparity study to examine utilization of the six (6) groups identified as DBEs in DOT projects. Disparity was found with regard to four (4) groups – African Americans, Native Americans, Asian Pacific, and Women. The remaining two (2) DBE groups, Hispanic males and Subcontinent Asian males, were found to be utilized appropriately.

New 2009-2010 FHWA Approved DBE Goal:

In light of the results of the disparity study, Caltrans requested a waiver from US DOT to allow the use of race and gender specific contract goals (targeted at UDBEs) in order to meet the objectives of Caltrans' DBE program. The FHWA approved Caltrans' DBE goal for 2009-2010, which is 13.5%, with 6.75% to be achieved through Race Neutral means and 6.75% to be achieved through Race Conscious means.

What Must Local Agencies Do To Comply with the New DBE Program?

To comply with the new Caltrans Race Conscious DBE Program, local agencies (e.g. cities, counties, transportation agencies, etc.) must:

1. Sign an Implementation Agreement (Caltrans Local Assistance Procedures Manual (LAPM) form 9-A) for the new Caltrans DBE program, adopted by the governing Board or Council, and submit it to Caltrans before June 2, 2009.
2. Calculate its 2009-2010 Annual Anticipated DBE Participation Level (AADPL), determine what portion will be Race Neutral and what portion will be Race Conscious, and submit LAPM form 9-B to Caltrans by June 1, 2009. Actual DBE participation over the past several years can be used to determine what portion of the AADPL should be Race Neutral, with the remainder to be Race Conscious. The Race Conscious portion of the AADPL will be the basis for the UDBE contract goal to be inserted into each of the agencies' DOT-funded contracts.

3. Continue to implement Race Neutral measures (e.g., inviting DBEs to pre-bid meetings, post a link to www.buildcalifornia.org on your website, etc.).
4. Reinstate Race Conscious (RC) measures, namely including contract goals in each consultant and construction contract and requiring proposers/bidders to meet the contract goal or document good faith efforts to do so. According to Caltrans, such RC measures apply only to the four Underutilized DBE groups (UDBEs).
5. Utilize new Caltrans LAPM forms to document UDBE commitment levels and good faith efforts at the time of the proposal/bid, DBE commitment levels at the time of contract award, and for final DBE reporting at contract closeout.
6. Utilize updated Caltrans boilerplate language for updating bidding and construction contract documents.
7. Monitor the Caltrans LAPM and website for further updates to forms and procedures.

If you need specific guidance to meet these new requirements, please call Barbara R. Gadbois, Esq. at (310) 552-3400 to discuss how GGLTS can help you comply with the new Caltrans DBE program requirements.

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