



**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**INVITATION FOR BIDS (IFB) CONTRACT 24-1003062**

**FOR**

**I-215 BI-COUNTY/SEGMENT-5 LANDSCAPE PROJECT**

**KEY IFB DATES**

<b>IFB Issue Date:</b>	<b>WEDNESDAY, SEPTEMBER 3, 2025</b>
<b>Pre-Bid Conference Date:</b>	<b>N/A</b>
<b>Written Questions/Approved Equal Request Deadline:</b>	<b>WEDNESDAY SEPTEMBER 17, 2025 @ 4:00 P.M.</b>
<b>Bid Due Date:</b>	<b>WEDNESDAY, OCTOBER 15, 2025 @ 2:00 P.M.</b>
<b>Good Faith Efforts Due:</b>	<b>TUESDAY, OCTOBER 20, 2025 @ 4:00 P.M.</b>
<b>Contract Award/Notice of Award Date:</b>	<b>DECEMBER 3, 2025</b>
<b>Notice To Proceed:</b>	<b>DECEMBER 2025</b>

**\*ALL DATES ARE TENTATIVE AND SUBJECT TO CHANGE**

Federal Project No. **STPNRSLN-6507(044)**



September 3, 2025

**SUBJECT: NOTICE INVITING SEALED BIDS  
INVITATION FOR BIDS (IFB) 24-1003062  
“I-215 BI-COUNTY/SEGMENT-5 LANDSCAPE PROJECT”**

The San Bernardino County Transportation Authority, (“SBCTA”), invites sealed bids for construction of the **I-215 Bi-County/Segment-5 Landscape Project**, hereinafter referred to as “Project”.

Firms intending to submit a bid should note the “Key IFB Dates” on the cover of this IFB. SBCTA intends, subject to contract approval, to have the selected firm under contract by April 2024. The IFB and IFB schedule updates and addenda, together with other important information are available on SBCTA’s website at [www.gosbcta.com](http://www.gosbcta.com) (“Bids & RFPs” under “DOING BUSINESS”). Firms are requested to check the Vendor Portal periodically, and no less frequently than weekly, for IFB updates, addenda and other information. All bidders will be held accountable for compliance with all updates, addenda and other information posted on the Vendor Portal. Please note that SBCTA will not be responsible for mailing any addenda, schedule updates or other information to any firm.

All questions and requests for clarifications to this IFB or approved equal requests must be put in writing and submitted to SBCTA electronically via Planet Bids, and they must be received by SBCTA no later than **4:00 p.m., on Wednesday, September 17, 2025**. All questions received after the date and time specified may or may not be responded to, at the sole discretion of SBCTA. SBCTA’s responses to the questions received by the date and time identified herein will be posted on the Vendor Portal on SBCTA’s website at [www.gosbcta.com](http://www.gosbcta.com): click on “Doing Business”, which will take you to the “Bids & RFPs” page. There, click on the tab “Vendor Portal”.

The procurement will be conducted electronically through SBCTA’s PlanetBids Vendor Portal webpage. SBCTA will not accept paper copies for any part of this procurement, including the bid submittal.

Bids are due at or before **2:00 p.m. on Wednesday, October 15, 2025**. Bids must be submitted electronically through SBCTA’s Vendor Portal PlanetBids. All bids will be publicly opened at the date and time stated above, via PlanetBids, and the Bid Results will be available to the public at the Bid Deadline, or immediately thereafter, on PlanetBids, and posted on SBCTA’s website. Additionally, SBCTA shall, at the time stated above or as soon thereafter as practicable, publicly open bids via PlanetBids, and read aloud such bids via Microsoft Teams at the following web address:

## Microsoft Teams [Need help?](#)

### [Join the meeting now](#)

Meeting ID: 237 153 441 977 2

Passcode: ZQ9RP2C2

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### Dial in by phone

[+1 469-217-7806,,957746341#](#) United States, Venus

[Find a local number](#)

Phone conference ID: 957 746 341#

To propose for this project, vendors must be registered with SBCTA's PlanetBids Vendor Portal website. A firm must accept the terms and conditions in order to proceed. Firms may save their bid at any time as a draft. Firms may edit the bid as often as they need to until the IFB closes. The PlanetBids system will not accept bids after the due date and time specified for this procurement and SBCTA will not consider any late submittals.

Please note that where two or more firms, persons or entities wish to submit one bid in response to this IFB, as a joint venture or partnership, each joint venturer, partner, or member shall be jointly and severally liable for any and all of the duties and obligations of the contractor that are assumed under or arise out of the contract. In the case of a joint venture, SBCTA provides all applicable notices under the contract to the joint venture contractor only, and not to individual joint venturers, partners, or members. Each of such joint venturers, partners, or members waives individual notice of the breach or non-performance of any undertaking or obligation of the contractor contained in, resulting from, or assumed under the contract, and the failure to give any such individual notice shall not affect or impair such venturer's, partner's, or member's joint and several liability under the contract.

### **General description of work:**

This Project is the combination of two Landscape Projects on Interstate 215 (I-215), the I-215 Bi-County Landscape and I-215 Segment-5 Landscape Projects. Both projects have similar scope which consist of providing California drought-tolerant planting with gravel and wood mulch in combination with rock boulders. In addition, the Project will include efficient irrigation and one year of plant establishment.

As of January 1, 2015, all contractors and subcontractors bidding and performing work on Public Works Projects must register on an annual basis with the California Department of Industrial Relations (DIR), and effective April 1, 2015, furnish electronic payroll records for new projects to the Labor Commissioner.

**This is a Federal-Aid project:** The contract, if awarded, will be financed in part by the U.S. Department of Transportation (DOT). Bidders are required to certify that they meet all federal requirements identified in this IFB, including but not limited to all applicable equal opportunity laws and regulations and all conditions of the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and the Labor Code of the State of California commencing in section 1770 et seq. The Federal minimum wage rates for this project are predetermined by the United States Secretary of Labor. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the General Prevailing Wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the awarded firm shall pay not less than the higher wage rate. Wage schedules

are available at SBCTA's office or on the internet at [www.access.gpo.gov/davisbacon/](http://www.access.gpo.gov/davisbacon/) and [www.dir.ca.gov/DSLRL/statistics\\_research.html](http://www.dir.ca.gov/DSLRL/statistics_research.html).

This project is a Federal Highway Administration (FHWA) funded project subject to Public Law 117-58, div. G, §§ 70901-27, 49 U.S.C. § 5323(j), and, 23 Code of Federal Regulations (CFR) 635.410 ("Buy America"), which provide Federal funds may not be obligated unless all steel and iron materials that are permanently incorporated have been manufactured in the United States, unless a waiver has been granted by FHWA pursuant to 23 CFR 635.410.

The bidder shall include the Buy America requirements in all agreements with subcontractors for Work on this Project. The bidder shall indemnify SBCTA from any loss, liability and expenses arising out of bidder's failure to comply with Buy America requirements. In the event that the bidder seeks a statutory waiver pursuant to 23 CFR 635.410, the bidder may not rely on the anticipated issuance by FHWA of such waiver to show compliance with Buy America requirements.

This project is subject to Title 49, CFR Part 26, entitled "Participation of Disadvantaged Business Enterprises" in the Department of Transportation Financial Assistance Programs (herein referred to as the "Regulations"). SBCTA plans to receive federal financial assistance from the FHWA through the California Department of Transportation (Caltrans). The Regulations in their entirety and the Caltrans DBE Program Plan are incorporated into this IFB by this reference. Bidders are to be fully informed respecting the DBE requirements and the Regulations. As required under the Regulations, SBCTA has established a **DBE contract goal of number 22% for this Project**.

A contractor or subcontractor shall not be qualified to bid on or be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

**Bidders are advised of the following forms related to Disadvantaged Business Enterprise. Both forms are available for download from Caltrans Local Assistance Procedures Manual (LAPM) Forms | Please note these forms are not due with the bid package.**

- a. LAPM 9-J DBE Commercially Useful Function Evaluation**
- b. LAPM 9-K DBE Joint Check Agreement Request**

**More information can be found at <https://files.constantcontact.com/e8bf6f8a501/da88b452-6964-4479-a9bc-f42510f5b52f.pdf?rdr=true>**

If the contract is awarded, the contractor will be required to comply with all applicable laws and regulations, whether or not specifically listed in this IFB or the contract.

Award of this contract is subject to the availability, appropriation and receipt of federal, State and/or local funds sufficient to carry out the work identified in this IFB.

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY  
INVITATION FOR BIDS CONTRACT 24-1003062**

**FOR**

**I-215 BI-COUNTY/SEGMENT-5 LANDSCAPE PROJECT**

**I. INSTRUCTION TO BIDDERS**

The San Bernardino County Transportation Authority (“SBCTA”) is soliciting bids from qualified firms (“firms” or “bidders”) to deliver I-215 Bi-County/Segment-5 Landscape Project.

**A. IFB DOCUMENTS**

The IFB, including but not limited to the plans and specifications, special provisions, and bid forms for bidding this project, can be obtained on PlanetBids.

**B. CONTACT INFORMATION**

All inquiries, contacts or questions related to this IFB shall be directed to:

**San Bernardino County Transportation Authority  
1170 W. 3rd Street, 2nd Floor  
San Bernardino, CA 92410-1715  
(909) 884-8276  
Attention: Jenny H. Holliday - Procurement Analyst III  
[jholliday@gosbcta.com](mailto:jholliday@gosbcta.com)**

Bidders must not discuss this IFB with any official, Board Member or employee of SBCTA, other than the staff identified herein. Neither bidders, nor anyone representing the bidder, are to discuss this IFB with any consultant or contractor engaged by SBCTA for assistance in preparing a response to the IFB. Violation of this prohibition may result in disqualification of the bidder.

**C. PRE-BID CONFERENCE**

There will be no Pre-Bid Conference for this Project.

**D. EXAMINATION OF BID DOCUMENTS/INFORMED BIDDER**

By submitting a bid, the bidder represents and acknowledges that it has thoroughly reviewed the requirements of this IFB, including all documents, contractual requirements, plans and specifications and has become familiar with the work identified in this IFB. Bidder also acknowledges that they are satisfied with the general and local conditions to be encountered; the character, quality, and scope of work to be performed; quantities and type of materials to

be furnished; and character, quality, and quantity of surface and subsurface materials or obstacles.

#### **E. SENSITIVE SECURITY INFORMATION (SSI) REQUIREMENTS**

There is no SSI in this IFB.

#### **F. WRITTEN QUESTIONS/APPROVED EQUALS**

All questions, requests for clarification or approved equal requests, including oral questions, must be put in writing and submitted electronically via PlanetBids and they must be received by SBCTA **no later than 4:00 p.m. on Wednesday, September 17, 2025**. SBCTA's responses to the questions received by the date and time identified herein will be posted on the PlanetBids.

Any request for an approved equal must be fully supported with technical data or other relevant information as evidence of support that the substitute meets or exceeds the current specification requirements. The burden of proof as to the suitability, equality and compatibility rests solely with the bidder. SBCTA shall be the sole judge as to the suitability, equality and compatibility of the proposed equal.

#### **G. ADDENDA**

Any changes to this IFB will be made by written addendum and posted on SBCTA's website. SBCTA will not be bound to any modifications to or deviations from the requirements set forth in this IFB as a result of any oral discussions and/or instructions. Firms shall acknowledge receipt of any addenda in Planet Bids in their bid.

#### **H. CONFLICT OF INTEREST**

Any firm that has provided architectural or engineering services to SBCTA for the work identified in this IFB before bid submittal is prohibited from any of the following: submitting a bid; subcontracting for any part of the work identified herein; and/or supplying materials. A firm who is prohibited from submitting a bid in response to this IFB will not be prevented from participating in future projects to the extent that no direct conflict of interest exists at that time. The determination of a conflict of interest, direct or incidental, shall be made by SBCTA's Executive Director or designee based upon substantial evidence.

#### **I. PRE-CONTRACTUAL EXPENSES**

SBCTA shall not be liable for any pre-contractual expenses incurred by the bidder in preparation or submittal of their bid. The bidder shall not include any such expenses in their bid. Prohibited pre-contractual expenses include any and all expenses incurred by the bidder prior to issuance of the Notice To Proceed by SBCTA.

## **J. IRAN CONTRACTING ACT OF 2010**

All bidders shall submit written certification, in accordance with Public Contract Code Section 2204(a), that at the time the bid is submitted, the bidder signing the proposal is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 and does not engage in activities in Iran as described in subdivision (a) of Public Contract Code Section 2202.5..

Proposers are cautioned that making a false certification may subject the proposer to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code Section 2205.

## **K. PREVAILING WAGES**

The work proposed in this IFB will be financed in whole or in part with federal funds; therefore, all statutes, rules and regulations promulgated by the federal government shall be followed for this contract. The Federal Prevailing Wage rates for this project are predetermined by the United States Secretary of Labor under the Davis-Bacon Act (40 U.S.C. §§ 3141 et seq.). Similarly, the project may also require compliance with the Labor Code of the State of California commencing at Section 1770 et seq. All contractors shall be bound by federal and California law regarding definitions; work subject to prevailing wages; duties, responsibilities and rights of the parties; wage determinations; petitions to review prevailing wage determinations; the certification of payroll records, including requests, content and cost; the withholding of funds from contractor; and hearing procedure. All pertinent federal and state statutes and regulations, including but not limited to those referenced above, are hereby incorporated by reference into this document as though set forth in their entirety.

Wage schedules will be set forth in the wage determination(s) issued to bidders by SBCTA in an addendum to this IFB and in copies of this IFB that may be examined at the offices described above, where the project plans, special provisions and bid forms can be reviewed. The wage schedules are also accessible via the Internet at [www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html) and <https://beta.sam.gov/help/wage-determinations>.

Wherever there is a difference between the prevailing wage rates predetermined by the Secretary of Labor (federal) and the General Prevailing Wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the contractor and subcontractors shall pay not less than the higher of the two wage rates. SBCTA will not accept State wage rates not specifically included in the federal minimum wage determinations. This includes “helper” (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where federal wage determinations do not contain State wage rate determination otherwise available for use by the contractor and subcontractors, the contractor and subcontractors shall pay not less than the federal minimum wage rate, which most closely approximates the duties of the employee(s) in question.

Effective June 20, 2014, the Department of Industrial Relations (DIR) made changes to the administration and enforcement of prevailing wage requirements including a contractor’s

registration program. Contractors are required to register and meet the online requirements as identified in DIR application before submitting a public works bid in the State of California. Additional information can be found at [www.dir.ca.gov](http://www.dir.ca.gov).

#### **L. NON-DISCRIMINATION**

The contract, if awarded, is subject to the California Fair Employment and Housing Act, Government Code sections 12900 et seq. The contractor or subcontractor shall not discriminate on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status of any person in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this contract, or such other remedy, as SBCTA deems appropriate..

#### **M. TAXES**

The amount of the bid must be inclusive of state and local sales tax, which remains the obligation of the contractor. The contractor is responsible for payment of all taxes for any goods, services, processes and operations for this contract.

#### **N. FEDERAL REQUIREMENTS**

This project is financed in part with federal funds, and therefore, all of the statutes, rules and regulations by the federal government applicable to the work being performed will apply to this project. All applicable provisions of Federal Highway Administration (FHWA) "Form 1273," included in this IFB, shall pertain to the project. FHWA Form 1273 shall be physically incorporated into the contract for this project and all subcontracts at any tier.

#### **O. LICENSING REQUIREMENTS**

The contractor shall possess a **Class C27** license at the time of award through Project acceptance by SBCTA. Bidder shall ensure that all subcontractors comply with the appropriate licensing requirements as identified in the State of California Public Contract Code section 20103.5.

#### **P. INSURANCE REQUIREMENTS (See Insurance Requirements in Sample Contract)**

Bidder shall review the insurance language and insurance limits in the sample contract. Bidder shall be fully prepared to secure the necessary insurance coverage and limits as detailed in the Contract and comply with all insurance requirements. Submitting "Certificate of Compliance with Insurance Requirements" form as part of the bid certifies the Bidder's understanding and compliance of the insurance requirements.



## II. BID SUBMITTAL

- A. Bids must be submitted on the forms provided in “Bid Forms” included in this IFB. Bidders are responsible for ensuring that the Bid Forms are properly completed. Only Bid Forms submitted through SBCTA’s PlanetBids Vendor Portal will be allowed unless otherwise stated elsewhere in this IFB. If any forms are incomplete or missing, the Bid may be considered non-responsive and subject to rejection at the sole discretion of SBCTA.
- B. Bids must be submitted electronically through SBCTA’s Vendor Portal, PlanetBids, **at or before 2:00 p.m., on Wednesday, October 15, 2025.** To bid for this project, firms must be registered with SBCTA’s Vendor Portal.
- C. A firm must accept the PlanetBids terms and conditions in order to proceed. Firms may save their bid at any time as a draft. Firms may edit the bid as often as they need to until the Invitation for Bids (IFB) closes. The PlanetBids system will not accept bids after the due date and time specified for this procurement and SBCTA will not consider any late submittals.
- D. Please note that where two or more firms, persons or entities wish to submit one bid in response to this IFB as a joint venture or partnership, each joint venturer, partner, or member shall be jointly and severally liable for any and all of the duties and obligations of the contractor that are assumed under or arise out of the contract. In the case of a joint venture, SBCTA provides all applicable notices under the contract to the joint venture contractor only, and not to individual joint venturers, partners, or members. Each of such joint venturers, partners, or members waives individual notice of the breach or non-performance of any undertaking or obligation of the contractor contained in, resulting from or assumed under the contract, and the failure to give any such individual notice shall not affect or impair such venturer's, partner's, or member's joint and several liability under the contract.
- E. All bids will be publicly opened at the date and time stated above, via PlanetBids, and the Bid Results will be available to the public at the Bid Deadline, or immediately thereafter, on PlanetBids, and posted on SBCTA’s website. Additionally, SBCTA shall, at the time stated above or as soon thereafter as practicable, publicly open bids via PlanetBids, and read aloud such bids via Microsoft Teams.

## III. ACCEPTANCE OF BIDS

SBCTA reserves the right to accept or reject any or all bids, to waive any informalities or irregularities in any bid, to determine which bid is the lowest responsive bid of a responsible bidder and which bid should be accepted in the best interest of SBCTA. SBCTA reserves the right to withdraw or to cancel this IFB at any time without prior notice, and SBCTA makes no representation that any contract will be awarded to any firm responding to this IFB.

## IV. WITHDRAWAL OF BIDS

A bidder, or authorized agent of a bidder, may withdraw its bid at any time before the bid opening date and time by submitting a written request to SBCTA, Attn: Procurement

Manager, at the address identified in this IFB. Withdrawing a bid prior to bid opening does not prevent a bidder from submitting a timely new bid. After bid opening, the bid shall remain open and shall not be withdrawn for a period of one hundred and twenty (120) calendar days from the date prescribed for its opening.

## **V. BID SECURITY FORMS**

- A. Bid Bond – Each bid shall be accompanied by a bid guaranty in the amount of ten percent (10%) of the bidder's bid amount in the form of (i) a cashier's check made payable to SBCTA; (ii) a certified check, made payable to SBCTA; or (iii) a Bidder's Bond executed by an admitted surety insurer (as defined in Code of Civil Procedure §995.660) made payable to SBCTA. The admitted surety executing a Bidder's Bond must be registered to do business in California. If the bidder fails or refuses to enter into a contract, if awarded, the bond shall be forfeited to SBCTA.
- B. Performance/Payment Bond – The successful bidder shall furnish to SBCTA a Payment and Performance Bond on the forms provided in this IFB, in the amount of one hundred percent (100%) of the bid amount per the requirements defined herein.

## **VI. SUBCONTRACTOR LISTING**

Pursuant to California Public Contract Code section 4104, the bidder shall identify the following in their bid:

- a. The name and address of each subcontractor performing work or rendering a service to the bidder in an amount in excess of one-half of one percent of the total bid amount, or \$10,000, whichever is greater; and
- b. Show the portion of work by bid item number, description and percentage of each bid item subcontracted.

The bidder shall list only one subcontractor for each portion of work as identified in its bid and shall complete and submit the subcontractor listing form presented in this IFB package as part of their bid. The successful bidder shall perform work equivalent to at least thirty percent (30%) of the total amount of the work with its own forces. If the bidder is not proposing to use subcontractors, or the portion of the work is less than ½ of 1%, or \$10,000, the bidder is to acknowledge the subcontractor listing form in this IFB with "Not Applicable".

The bidder shall complete the form entitled "Listing of Subcontractors" contained in this IFB. Section A of the form must be completed and submitted with the bid. Section B of the form shall be completed and submitted to SBCTA within 24 hours of the Bid Due Date.

## **VII. DISADVANTAGED BUSINESS ENTERPRISE**

In conformance with Title 49 CFR, Part 26, SBCTA has established a contract specific goal of **22%** for Disadvantaged Business Enterprises (DBEs).

Bidders must complete and submit to SBCTA the following forms no later than 4:00 p.m., five (5) calendar days from the Bid Due Date:

- Form 12-B, “Bidders List of Subcontractors (DBE and Non DBE)” Parts I and II
- Form 15-G, “Local Agency Bidder DBE Commitment”, and, if required,
- Form 15-H, “DBE Information-Good Faith Efforts” (from all bidders)
- Form 9-I, “DLA DBE Confirmation”

The bidder, in order to be considered responsible and responsive, must meet the contract specific DBE goal identified in this IFB or make Good Faith Efforts to meet the goal established for this Contract. If the goal is not met, the bidder must document adequate Good Faith Efforts. Only DBE firms certified through the California Unified Certification Program (CUCP) will be counted towards the contract goal; however, all DBE participation shall be collected and reported. Please refer to Attachment B to this IFB for further information, instructions and forms. Bidders are advised that questions related to the DBE requirements must be submitted as a written question per the instructions in this IFB.

**Bidders are advised of the following forms related to Disadvantaged Business Enterprise.**

**Both forms are available for download from Caltrans Local Assistance Procedures Manual (LAPM)**

**Forms | Please note these forms are not due with the bid package.**

- a. LAPM 9-J DBE Commercially Useful Function Evaluation**
- b. LAPM 9-K DBE Joint Check Agreement Request**

**More information can be found at:**

**<https://files.constantcontact.com/e8bf6f8a501/da88b452-6964-4479-a9bc-f42510f5b52f.pdf?rdr=true>**

## **VIII. CONTRACT AWARD**

Any contract awarded as a result of this IFB will be awarded to the lowest responsive, responsible bidder in accordance with this IFB. The successful bidder shall be required to perform all the terms and conditions of SBCTA’s Contract as identified in the form attached hereto as Attachment A.

## **IX. EXECUTION OF CONTRACT**

The successful bidder shall submit to SBCTA the executed contract together with the required Performance and Payment Bonds, certificates of insurance, Non Lobbying Certifications For Federal-Aid Contracts w/ Disclosure Forms, Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusions for the prime and its subcontractors, if applicable, within ten (10) working days from the date of the Notice of Award issued by SBCTA. Failure to submit the documents cited and to execute the contract within the specified time shall be just cause for the annulment of the award and the forfeiture of the bidder’s Bid

Bond.

## **X. PROTEST INFORMATION**

SBCTA has on file written Protest Procedures (Policy 11007). Firms may download a copy from <http://www.gosbcta.com>: hover over the “Doing Business” tab and then select “Bids & RFPs.”

## **XI. PUBLIC RECORDS ACT**

Bids may be subject to public disclosure under the California Public Records Act and other public records laws, and by submitting a bid, the bidder waives all rights to confidentiality of any information submitted in the bid and agrees to any and all such disclosures required or permitted by law. Bids become the property of SBCTA when submitted and by submitting a bid, the bidder agrees that SBCTA may use any information, documentation or writing contained in the bid for any SBCTA purpose.

# **BID FORMS**

## **FORMS TO BE SUBMITTED AT TIME OF BID**

1. Bid Form
2. Bidders Bond (1 original mailed to SBCTA and 1 scanned electronic copy sent via email)
3. Non-Collusion Affidavit
4. Listing of Subcontractors-Section A. Section B to be submitted within 24 hours after the bid due date.
5. Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity
6. Bidders Certificate of Compliance – Worker’s Compensation Insurance
7. Non-Lobbying Certification for Federal-Aid Contracts w/Disclosure Form, if applicable – (LLL Form) (Prime)
8. Public Contract Code section 10162 Questionnaire
9. Public Contract Code section 10285.1 Statement
10. Certification Regarding Project And Worker Safety Requirement
11. Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion- Primary Participant
12. Certification of Compliance With Buy America and Build America Buy America (BABA) Requirements
13. Certification for Clean Air Act and Federal Water Pollution Control
14. Previous Contracts and Compliance Reports
15. Certificate of Compliance With Insurance Requirements
16. Contractor Questionnaire
17. Iran Contracting Act of 2010 Certification Form

### **DBE FORMS MUST BE SUBMITTED WITHIN FIVE (5) CALENDAR DAYS AFTER BID DUE DATE**

### **ALL FORMS MUST BE SUBMITTED ELECTRONICALLY, HARD COPIES WILL NOT BE ACCEPTED.**

1. DBE Exhibit 12-B - “Bidders List of Subcontractors (DBE and Non DBE)” Part 1 and Part II
2. DBE Exhibit 15-G - “Local Agency Bidder DBE Commitment”
3. DBE Exhibit 15-H - “DBE Information-Good Faith Efforts”, with all applicable back-up documentation.
4. DLA DBE Confirmation Exhibit 9-I

### **FORMS THAT MUST BE SUBMITTED WITHIN TEN (10) BUSINESS DAYS AFTER NOTICE OF AWARD**

1. Executed Contract – signed by contractor
2. Payment Bond – 100% of Bid amount (1 original and 1 electronic scanned version must be received before the deadline)
3. Performance Bond – 100% of Bid amount (1 original and 1 electronic scanned version)

must be received before the deadline)

4. Insurance Certificates with endorsements
5. Non-Lobbying Certification for Federal-Aid Contracts w/Disclosure Form, if applicable (LLL) (subcontractors)
6. Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion Form, if applicable– Lower Tier (subcontractors)



**BID FORM**  
**I-215 BI-COUNTY/SEGMENT-5 LANDSCAPE PROJECT**  
**CONTRACT NO. 24-1003062**  
**(Form must be completed in its entirety)**

Name of Bidder: \_\_\_\_\_

Business P.O. Box: \_\_\_\_\_

Business Street Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date: \_\_\_\_\_

Contractor's License Number /  
Classification \_\_\_\_\_

The work for which this bid is submitted is for the construction in conformance with the Invitation for Bid, Special Provisions, including the payment of not less than the higher of State general prevailing wage rates or Federal Prevailing wage rates, as defined in the Invitation For Bids; the project plans and specifications described below, including **any Addenda** thereto; the Contract annexed hereto; and also State of California Department of Transportation Standard Plans dated 2024 and Standard Specifications dated 2024 and safety related portions dated 2018 and latest updates; the 2015 Green Book; the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished; and the General Prevailing Wage Rates most current edition at the date of the bid opening.

Accompanying this bid is a "Cashier's Check", "Certified Check", or "Bidders Bond" (**Circle applicable term as the case may be**), made payable to the SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY for the sum of \_\_\_\_\_ Dollars (\$),  
\_\_\_\_\_ in an amount equal to ten percent (10%)  
of the total bid amount.

If the Cashier's Check or Certified Check accompanies this bid as the guarantee, then the proceeds thereof shall become the property of the San Bernardino County Transportation Authority if, in the case this bid is accepted by said Board of San Bernardino County Transportation Authority or Authorized Representative, and such bidder has received a Notice of Award issued by SBCTA, the undersigned shall fail within ten (10) business days, not including Saturdays, Sundays and legal holidays, thereafter to execute a Contract with and furnish the securities required by said Board of San Bernardino County Transportation Authority or authorized representative. Otherwise, such guarantee shall be returned to the undersigned.



## BID FORM 24-1003062

The undersigned hereby acknowledges the following:

1. The Project Plans dated July 21, 2025, and Invitation for Bid and Special Provisions dated August 27, 2025 for the work to be done are entitled:

### **I-215 BI-COUNTY/SEGMENT-5 LANDSCAPE PROJECT**

#### **Federal Project No. STPNRSLN-6507(044)**

This bid is submitted with respect to the changes to the IFB documents included in the Addenda issued. Bidder further acknowledges the receipt of the following Addenda Number(s): insert number(s) \_\_\_\_\_.

2. The bidder has thoroughly examined and is familiar with the work required and the documents of this IFB. By investigation at the site of the work and otherwise, the bidder is satisfied as to the nature and location of the work and is fully informed as to all conditions and matters, which can affect the work performed and the cost thereof.
3. Bidder fully understands the scope of the work and specifications identified in this IFB, has carefully checked all words and figures inserted in this IFB, and further understands that SBCTA will not be liable for any errors or omissions in the preparation of this bid.
4. Bids are required for the entire work. The amount of the bid for comparison purposes will be the total of all items. The total of unit basis items will be determined by extension of the item price bid on the basis of the estimated quantity set for the item.
5. The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item.
6. In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b) as follows:
  - (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount of the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;
  - (b) (Decimal errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, one-hundredth, etc., from the entered total, the discrepancy will be resolved using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in SBCTA's final estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise, if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular, unless the project being bid has only a single item and a clear, readable total bid is provided. Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number or digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be

item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the item's total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity, which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of SBCTA, and that discretion will be exercised in the manner deemed by SBCTA to best protect the public interest in the prompt and economical completion of the work. The decision of SBCTA respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

7. If this Bid is accepted and the undersigned fails to execute the Contract and furnish the Performance and Payment bonds, insurance certificates, and the Required Documents within ten (10) working days, not including legal holidays, after the date of SBCTA's delivery to Bidder of the Notice of Award, SBCTA may, at its option, determine that the Bidder has abandoned the Contract, and thereupon this Bid and the acceptance thereof shall be null and void and the forfeiture of the bid security accompanying this Bid shall operate and the same shall become the property of SBCTA.
8. The undersigned, as Bidder, declares that the only persons or parties interested in this Bid as principals are those named herein; that this bid is made without collusion with any other person, firm or corporation; that the Bidder has carefully examined the location of the proposed work, the Contract, any addenda issued, and the plans referred to herein, having become thoroughly familiar with the terms and conditions of the Contract Documents and with the local conditions affecting the performance and cost of the work at the place where the Work is to be done; and the bidder hereby proposes, and agrees if this bid is accepted, that the Bidder will contract with SBCTA, in the form of the copy of the Contract annexed hereto, to provide all necessary labor, machinery, tools, apparatus, and other means of construction, and to do all the work and furnish all the materials specified in the Contract, in the manner and time therein prescribed, and in accordance with the requirements of SBCTA as herein set forth, and that he/she will accept as full payment therefore the following prices, to wit:

**BID ITEMS LIST LOCATED ON PLANET BIDS  
UNDER THE “LINE ITEMS” TAB.**

**SBCTA**

**BID FORM 24-1003062  
(Continued)**

9. It is understood that SBCTA reserves the right to reject the bid and that it shall remain open and not withdrawn for a period of one hundred and twenty (120) calendar days from the date of the bid opening.
10. In accordance with the provisions of sections 1860 and 1861 et seq. of the California Labor Code, every contractor will be required to secure the payment of compensation of his employees. Each contractor to whom a public works contract is awarded shall certify that he/she is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this contract.
11. In accordance with California Public Contract Code section 10232, the bidder hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with any order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board.
12. In accordance with Title VI of the Civil Rights Act of 1964 (the "Act"), as amended, which prohibits discrimination on the basis of race, color, and national origin, the contractor and all subcontractors will ensure their services are consistent with and comply with obligations and procedures outlined in SBCTA's current Board-adopted Title VI Program, including the Public Participation Plan and the Language Assistance Plan. The contractor certifies that they will comply with all requirements of the Act.
13. Bidder hereby certifies that he/she has reviewed the insurance coverage requirements specified in the Contract. Should he/she be awarded the contract for the work, bidder further certifies that he/she can meet all Contract requirements for insurance including insurance coverage of his/her subcontractors.
14. Bidder hereby lists the names of all persons interested in the forgoing bid as principals and are as follows:

**IMPORTANT NOTICE:** If bidder or other interested person is a corporation, state legal name of corporation, and names of the officers authorized to execute this bid. If bidder is a limited liability company, state legal name of LLC and names of manager(s) (if manager-managed) or member(s) (if member-managed) authorized to submit this bid. If bidder is a partnership, state true name of firm and names of all partners composing firm. If bidder or other interested person is an individual, state first and last names in full.

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**BID FORM 24-1003062**  
**(Continued)**

15. Bidder has attached hereto and incorporated herein the complete and entire list of subcontractors to be employed by the undersigned in the performance of the work.
16. Bidder certifies under penalty of perjury under the laws of the State of California that the statements within the foregoing Bid, including, without limitation, the questionnaire and statements provided for in Public Contract Code sections 10162, 10232 and 10285.1, are true and correct, and that the Bidder has complied with the requirements of section 8103 of the Fair Employment and Housing Authority Regulations (Chapter 5, Title 2 of the California Code of Administrative Regulations). By my signature on this bid, I further certify, under penalty of perjury of the laws of the State of California and the United States of America, that the Non-collusion Affidavit required under Title 23, United States Code, section 112, the State of California Public Contract Code section 7106, and Title 2 CFR, Parts 180 and 1200, "Debarment and Suspension" are true and correct.

This declaration executed in California, at (place) \_\_\_\_\_ on (date) \_\_\_\_\_

Business Type: (Check only one) ☐ Corporation ☐ Partnership ☐ Sole Proprietorship

☐ Limited Liability Company

Business organized under the laws of the State of: \_\_\_\_\_

Bid and Certification submitted by \_\_\_\_\_

Company Name

**SIGN HERE**

\_\_\_\_\_  
Signature of Authorized Representative of Bidder

\_\_\_\_\_  
Print Name and Title

Note: If the bidder is a corporation, the legal name of the corporation shall be set forth above with the signature(s) of the officer(s) authorized to sign contracts on behalf of the corporation. If bidder is a limited liability company, the legal name of the LLC shall be set forth above with the signature(s) of the manager(s) or member(s) authorized to bind the LLC. If bidder is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if a bidder is an individual, his/her signature shall be placed above. If signature is by an agent, other than an officer of a corporation or member of a partnership, a Power of Attorney must be on file with SBCTA prior to opening of the bids or submitted with the bid; otherwise, the bid will be disregarded as irregular and found non-responsive.

**BIDDERS BOND**

**24-1003062**

**KNOW ALL MEN BY THESE PRESENTS:**

That, \_\_\_\_\_ (bidder's name), as principal and bidder (hereafter "Principal"), and \_\_\_\_\_ (surety company) (hereafter "Surety"), as surety for this bond, provide this forfeiture bond to SBCTA (hereafter "Owner") as beneficiary. Surety shall be an admitted surety insurer as defined in section 995.660 of the California Code of Civil Procedure.

Principal and Surety are firmly bound unto the Owner in the penal sum of ten percent (10%) of the total aggregate amount of the bid of the above contractor, submitted by said Principal to Owner for the work described below (hereafter "Penal Sum"), for the payment of which sum in lawful money of the United States, well and truly to be made, Principal and Surety bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. The Penal Sum shall be forfeited in its entirety to Owner, without consideration as to the amount of actual damages incurred by Owner, if Principal fails to enter into the Contract for the work described in this "Invitation for Bids" and fails to furnish the necessary performance and payment bonds and insurance. A Bid Bond has been submitted by Principal to owner and delivered to and received by SBCTA located at: 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, CA 92410-1715.

**IN WITNESS WHEREOF**, we hereunto set our hands and seals on this day of \_\_\_\_\_.

Principal: \_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip

Dated \_\_\_\_\_

\_\_\_\_\_  
Signature of Surety

NOTE: Signatures of those executing for Surety must be properly acknowledged. This form may be reproduced for transmittal to the Surety for execution and attached to the front of the original Bid Bond Form.

**CERTIFICATE OF ACKNOWLEDGMENT  
BIDDERS BOND**

**CONTRACT 24-1003062**

State of California

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ before me, \_\_\_\_\_ personally appeared, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to this instrument as the attorney-in-fact of, and acknowledged to me that he/she/they subscribed the name of the said company thereto as surety, and his/her own name as attorney-in-fact.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

Seal

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**Contract No. 24-1003062**

**WARRANTY BOND FORM**

Bond No. \_\_\_\_\_

**KNOW ALL MEN BY THESE PRESENTS,**

**THAT WHEREAS**, the San Bernardino County Transportation Authority, a California public entity (the "Obligee") has awarded to \_\_\_\_\_ a Contract (as amended from time to time, the "Contract"), which Contract is specifically incorporated by reference in this Bond, for the design and construction of the \_\_\_\_\_ (the "Project");

**AND WHEREAS**, initially capitalized terms not otherwise defined in this Bond have the meaning given in the Contract;

**AND WHEREAS**, as a condition to release of the Performance Bond and Payment Bond, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations under the Contract after final acceptance, including payments owing to persons named in California Civil Code Section 9100;

**NOW THEREFORE**, we the undersigned Principal and \_\_\_\_\_ (the "Surety" or "Co-Sureties"), an admitted surety insurer in the State of California, are held and firmly bound unto the Obligee, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "Bonded Sum"), for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.

**THE CONDITION OF THIS BOND IS SUCH THAT**, if Principal shall promptly and faithfully perform all of its obligations under the Contract, as they may be amended or supplemented, including without limitation the performance of all Warranty Work, enforcement of subcontractor warranties, and payment of claims as described in paragraph 5 below, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect, it being expressly understood and agreed that the liability of Surety for any and all claims hereunder shall in no event exceed the Bonded Sum.

The following terms and conditions shall apply with respect to this Bond:

1. The Contract is incorporated by reference into this Bond.
2. If the above bound Principal, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions, obligations and agreements in the Contract, including any and all amendments, supplements, and alterations made to the Contract as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify, defend and save harmless the Obligee and all other Indemnified Parties, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.
3. This Bond shall cover the cost to perform all the obligations of the Principal pursuant to the Contract. The obligations covered by this Bond specifically include all payment obligations, liability for damages and warranties as specified in the Contract, but not to exceed the Bonded Sum.
4. Whenever the Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety (or Co-Sureties) shall promptly:
  - (a) remedy such default, or

8/29/14



- (b) complete the work and perform the obligations covered by this Bond in accordance with the terms and conditions of the Contract then in effect, or
- (c) select a contractor or contractors to complete the work and perform the obligations covered by this Bond in accordance with the terms and conditions of the Contract then in effect, using a contractor or contractors approved by the Oblige in its sole discretion, arrange for a contract that contains substantially the same terms and conditions of the Contract between such contractor or contractors and the Oblige, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion; but not exceeding, including other costs and damages for which the Surety (or Co-Sureties) is (are) liable hereunder, the Bonded Sum.

5. This Bond shall inure to the benefit of the persons named in Civil Code Section 9100 or anyone required to be paid by law or under the Contract so as to give a right of action to such persons or their assigns in any suit brought upon this Bond. The obligations covered by this Bond specifically include:

- (a) payments owing to any of the persons named in California Civil Code Section 9100 involved in prosecution of the Work as provided for in the Contract, or
- (b) any amounts due under the Unemployment Insurance Code, with respect to work or labor performed by such claimant under the Contract or subcontracts, or
- (c) any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Principal and its subcontractors pursuant to Revenue and Taxation Code Section 18662 et seq. with respect to such work and labor, and
- (d) any other payments owing to anyone required to be paid by law.

In case suit is brought to enforce the provisions of this paragraph 5, the Surety (or Co-Sureties) will pay a reasonable attorney's fee, to be fixed by the court.

6. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Contract, or in the work to be performed with respect to the project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or any rescission or attempted rescission of the Contract, or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

7. [Use in case of multiple or co-sureties] The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Oblige and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Oblige or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Oblige designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be \_\_\_\_\_."

In witness whereof, we have hereunto set our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

Principal: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Surety

**NONCOLLUSION AFFIDAVIT**  
**Title 23 United States Code section 112 and Public Contract Code section 7106**

In accordance with Title 23 United States Code section 112 and California Public Contract Code section 7106, the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I, declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
Principal Officer of:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Contractor)

## LISTING OF SUBCONTRACTORS

In compliance with the provisions of section 4100 et seq. of the Public Contract Code of the State of California, and any amendments thereof, the undersigned has set forth below the name, the address, and a description of the work for each subcontractor who will perform work or labor or render services to the undersigned in or about the construction of the work or improvement to be performed in an amount over \$10,000 or 0.5% of the total contract bid price, whichever is greater.

**Section A - This section is to be completed and submitted with your bid**

**Subcontractor:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

\_\_\_\_\_  
License Number

\_\_\_\_\_  
DIR Registration No.

Description of work to be performed:

**Subcontractor:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

\_\_\_\_\_  
License Number

\_\_\_\_\_  
DIR Registration No.

Description of work to be performed:

**Section B -This section to be completed and submitted within 24 hours of the bid due date to [jholliday@gosbcta.com](mailto:jholliday@gosbcta.com)**

**Subcontractor:**

\_\_\_\_\_  
Bid item number, description and percentage of bid item

\_\_\_\_\_  
Bid item number, and description of work

\_\_\_\_\_ % of work

**Subcontractor:**

\_\_\_\_\_  
Bid item number, description and percentage of bid item (cont'd)

\_\_\_\_\_  
Bid item number, and description of work

\_\_\_\_\_ % of work

By:

\_\_\_\_\_  
Bidder's Signature

**This form may be reproduced and attached behind this page to list additional subcontractors.**

**NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE  
EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION  
(41 CFR PART 60-4)**

As prescribed in 48 CFR § 22.810(b), insert the following provision: Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction (Feb. 1999), -

(A) The bidders' attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(B) The goals for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

**Goals for minority participation for each trade is 19.0%**

**Goals for female participation for each trade is 6.9%**

These goals are applicable to all of the contractor's construction work performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, the contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(C) The contractor's compliance with the regulations in [41 CFR 60-4](#) shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled Affirmative Action Compliance Requirements for Construction, and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor, or from project to project, for the sole purpose of meeting the contractor's goals shall be a violation of the contract and the regulations in [41 CFR 60-4](#). Compliance with the goals will be measured against the total work hours performed.

(D) The contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(E) As used in this Notice, and in any contract resulting from this solicitation, the covered area is San Bernardino, California.

The bidder represents that (a) it ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the

Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

**BIDDERS CERTIFICATE OF COMPLIANCE REGARDING  
WORKERS COMPENSATION INSURANCE**

In conformance with current statutory requirements of section 1860 et. seq., of the Labor Code of the State of California, the undersigned confirms the following certification:

“As the bidder, I am aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

Bidder Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Date: \_\_\_\_\_

## NON-LOBBYING CERTIFICATION FOR FEDERAL-AID CONTRACTS

I, \_\_\_\_\_ (Firm Name), as the bidder certifies, by signing and submitting this bid, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in conformance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_  
Signature of bidder's authorized official



## **INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action or a material change to previous filing pursuant to Title 31 U.S.C. section 1352. The filing of a form is required for such payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action in item 1. If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., RFP-DE-90-001.
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action. (b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter last name, first name and middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal official(s). Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form and print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503
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# DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material changes  For Material Change Only: year _____ quarter _____  date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known: _____		<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>   Congressional District, if known: _____
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b>  \$ _____	
<b>10. a. Name and Address of Lobbying Entity</b> (if individual, last name, first name, MI)		<b>b. Individuals Performing Services (including address if different from No 10a)</b> (last name, first name, MI):
(attach Continuation Sheet(s) SF - LLL - A if necessary)		
<b>11. Amount of Payment (check all that apply):</b>  \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment (check all that apply):</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee  <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other specify: _____	
<b>12. Forum of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify      nature: _____ value: _____		
<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s) or Member(s) contracted for Payment indicated in Item, 11:</b>     (attach Continuation Sheet(s) SF-LLL-A if necessary)		
<b>16. Information requested through this form is authorized by Code 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.</b>	Signature: _____  Print name: _____  Title: _____  Telephone No: _____      Date: _____	
Federal Use Only		Authorized for Local Reproduction

**DISCLOSURE OF LOBBYING ACTIVITIES** (Continuation Sheet)

Reporting Entity: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

## CALIFORNIA PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In accordance with California Public Contract Code section 10162, the bidder shall complete, under penalty of perjury, the following questionnaire.

Has the bidder, any officer of the bidder, or any employee of the bidder who has proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

☐ Yes

☐ No

If the answer is yes, explain the circumstances in the space below.

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## **CALIFORNIA PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT**

In accordance with California Public Contract Code section 10285.1, the bidder hereby declares under penalty of perjury that neither the bidder, nor any subcontractor listed by the bidder for this bid has been convicted by a court of competent jurisdiction within the preceding three (3) years of any offenses referred to in the section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of any public works contract, as defined in Public Contract Code section 1101, with any public entity, as defined in Public Contract Code section 1100, including the Regents of the University of California or Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employees thereof, as referred to in section 10285.1.

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**SIGNATURE**

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**CONTRACTOR NAME**

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**NAME AND TITLE OF AUTHORIZED SIGNATORY**

**If bidder cannot so certify, explain fully in the space below:**

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**CERTIFICATION REGARDING PROJECT AND WORKER SAFETY  
REQUIREMENTS**

\_\_\_\_\_ [insert contractor name] hereby certifies the following responses under penalty of perjury, and to the best of its knowledge and belief, on behalf of its principals, and/or any joint venture in which it is or was a partner, member, and/or participant.

**In the past three years have you, your principal(s), and/or any joint venture in which you or your principal(s) were a partner, member, and/or participant, had any portion of its work on a project fully or partially terminated, suspended, stopped, and/or delayed as a result of safety violations for which you or any person under contract with you were responsible?**

**CHECK ONE:   ☐  YES    OR    ☐  NO**

**In the past three years has a final order or determination been made against you, your principal(s), and/or any joint venture in which you or your principal(s) were a partner, member, and/or participant, which resulted in the assessment of penalties for any “serious,” “willful,” or “repeat” violation(s) of safety or health regulations?**

**CHECK ONE:   ☐  YES    OR    ☐  NO**

\_\_\_\_\_ [insert contractor name] hereby certifies and affirms the truthfulness, completeness, and accuracy of the content of the statements and information above under penalty of perjury pursuant to the laws of the State of California and the United States of America.

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**CONTRACTOR NAME**

\_\_\_\_\_  
**NAME AND TITLE OF AUTHORIZED SIGNATORY**

## INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION

### TITLE 2, CODE OF FEDERAL REGULATIONS, PARTS 180 and 1200

Each bidder shall complete the "Certification of Debarment, Suspension and other Responsibility Matters" included in this IFB for itself and its principals and submit the certification with its bid. Failure to submit the certification may result in the rejection of the bid.

If a bidder plans to use subcontractors on this project, the bidder shall have all subcontractors with contracts in excess of \$25,000 complete the certification entitled "Certification Regarding Debarment For Lower Tier Covered Transactions" for and **submit that certification within ten (10) working days after Notice of Award.**

By signing and submitting this bid, the prospective bidder is providing the certification set out below. The inability of the bidder to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The bidder shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with SBCTA's determination whether to enter into this transaction. However, **failure of the bidder to furnish a certification or an explanation shall disqualify such person from participation in this transaction.**

The certification in this clause is a material representation of fact upon which reliance was placed when SBCTA determined to enter into this transaction. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to other remedies available to SBCTA, SBCTA may terminate this transaction for cause or default.

The bidder shall provide immediate written notice to the department or agency to which this bid is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact SBCTA for assistance in obtaining a copy of those regulations.

The prospective primary participant agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 2 CFR part 180, subpart H, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

The bidder further agrees by submitting this bid that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-



Lower Tier Covered Transaction," provided by SBCTA, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 2 CFR part 180, subpart H, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A bidder may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>).

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under these instructions, if a bidder knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 2 CFR part 180, subpart H, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to SBCTA, SBCTA may terminate this transaction for cause or default.

## **Instructions for Certification Regarding Debarment, Suspension – Lower Tier Covered Transactions**

*Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 2 CFR Part 180).*

By signing and submitting this bid, the subcontractor is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the subcontractor knowingly rendered an erroneous certification, in addition to other remedies available to SBCTA, SBCTA may pursue available remedies, including suspension and/or debarment.

The subcontractor shall provide immediate written notice to the person to which this bid is submitted if at any time the subcontractor that its certification was erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal or bid," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this bid is submitted for assistance in obtaining a copy of those regulations.

The subcontractor agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The subcontractor further agrees by submitting this bid that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>).

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER  
RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS (PRIME)**

The \_\_\_\_\_  
Firm Name/Principal

hereby certifies under penalty of perjury, and to the best of its knowledge and belief, that it, its principals, and/or any joint venture in which it is or was a partner, member, and/or participant:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local), with commission of any of the offenses enumerated in paragraph 2 herein;
4. Have not, within a three-year period preceding this bid had one or more public transactions (federal, state or local) terminated for cause or default;
5. Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding the proposal (DOT Order 4200.6 implementing appropriations act requirements);
6. Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (DOT Order 4200.6 implementing appropriations act requirements); and

If unable to certify to any of these statements in this certification, the primary participant (bidder) shall attach an explanation to this certification.

**THE PRIMARY  
PARTICIPANT**

\_\_\_\_\_  
Firm Name/Principal

**Certifies and affirms the truthfulness and accuracy of the content of the statements submitted on and with this certification under penalty of perjury pursuant to the laws of the State of California and the United States of America and understands that the provisions of 31 U.S.C. Sections 3801 et seq., are applicable.**

**Signature and Title of Authorized  
Official:**

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**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER  
INELIGIBILITY AND VOLUNTARY EXCLUSION –  
LOWER TIER COVERED TRANSACTIONS- (SUBCONTRACTORS)**

The \_\_\_\_\_

Firm Name/Principal

hereby certifies under penalty of perjury, and to the best of its knowledge and belief, that it, and its principals, and/or any joint venture in which it is or was a partner, member, and/or participant:

1. Are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency;
2. Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding the proposal (DOT Order 4200.6 implementing appropriations act requirements); and
3. Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (DOT Order 4200.6 implementing appropriations act requirements).

If unable to certify to any of the statements in this certification, such participant(s) shall attach an explanation to this bid.

**THE LOWER TIER PARTICIPANT** \_\_\_\_\_

**Firm Name/Principal**

**Certifies and affirms the truthfulness and accuracy of the content of the statements submitted on and with this certification under penalty of perjury pursuant to the laws of the State of California and the United States of America and understands that the provisions of 31 U.S.C. section 3801 et seq. are applicable.**

**Signature and Title of Authorized Official:** \_\_\_\_\_

# San Bernardino County Transportation Authority

## **PROMPT PAYMENT CERTIFICATION** **(Form not needed until time of invoicing)**

I, \_\_\_\_\_, hereby certify that \_\_\_\_\_  
(Name) (Prime Contractor)

has fully complied with all Prompt Payment Provisions set for in Article 3 Prompt Payment/Retention of Contract 24-1003062 for the period of \_\_\_\_\_ through \_\_\_\_\_, and will make verification of payment records immediately available upon SBCTA's request.

I certify under penalty of perjury that the information provided in true and/or correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## **CERTIFICATION OF COMPLIANCE WITH BUY AMERICA AND BUILD AMERICA BUY AMERICA (BABA) REQUIREMENTS**

Under the Buy America and Build America, Buy America (BABA) requirements, Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the project is subject to a general waiver.

### **CERTIFICATE OF COMPLIANCE**

**The signatory to this Certification hereby certifies that** it will comply with the requirements of Buy America, 49 USC §5323(j), 49 C.F.R. part 661, concerning steel, iron, and manufactured products.

**The signatory to this Certification hereby certifies that** it will comply with the requirements of Build America, Buy America (BABA), Public Law 117-58, div. G, §§ 70901-27 and the applicable regulations in 2 C.F.R. Parts 184 and 200 and guidance in OMB Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure at <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>; Notice that the Build America, Buy America Requirement for Construction Materials Applies Effective November 10, 2022, and Notice of Proposed Waiver of that Requirement for a Narrow Category of Contracts and Solicitations, 87 FR 68572, concerning steel, iron, manufactured products and construction materials.

*Signature* \_\_\_\_\_ *Date* \_\_\_\_\_

*Name* \_\_\_\_\_

*Title* \_\_\_\_\_ *Company Name* \_\_\_\_\_

### **CERTIFICATE OF NON-COMPLIANCE**

**The signatory to this Certification hereby certifies that** it cannot comply with the requirements of Buy America, 49 USC §5323(j), 49 C.F.R. part 661, concerning steel, iron, and manufactured products, but it may qualify for an exception to the requirement pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

**The signatory to this Certification hereby certifies that** it cannot comply with the requirements, but may qualify for an exception, of Build America, Buy America (BABA), Public Law 117-58, div. G, §§ 70901-27 and the applicable regulations in 2 C.F.R. Parts 184 and 200 and guidance in OMB Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure at <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>; Notice that the Build America, Buy America Requirement for Construction Materials Applies Effective November 10, 2022, and Notice of Proposed Waiver of that Requirement for a Narrow Category of Contracts and Solicitations, 87 FR 68572, concerning steel, iron, manufactured products and construction materials.

*Signature* \_\_\_\_\_ *Date* \_\_\_\_\_

*Name* \_\_\_\_\_

*Title* \_\_\_\_\_ *Company Name* \_\_\_\_\_

## **BIDDER'S CERTIFICATION OF COMPLIANCE WITH CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**



By submission of this bid, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, hereby certifies:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. §§ 7401 *et seq.*), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the bidder agrees to comply and remain in compliance with all the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed hereunder.
3. That the successful bidder shall promptly notify SBCTA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the successful bidder agrees to include or cause to be included these requirements in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

**Signature and Title of Authorized Official:** \_\_\_\_\_

## **PREVIOUS CONTRACTS AND COMPLIANCE REPORTS**

The bidder represents that—

- (a) It ☐ has ☐has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It ☐has ☐has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

**CERTIFICATE OF COMPLIANCE WITH  
INSURANCE REQUIREMENTS**

This form must be completed in its entirety and submitted along with  
Contractor's response to the Bid

**INSURANCE REQUIREMENTS (check appropriate boxes below):**

- ☐ Contractor/Consultant has provided a copy of the insurance requirements contained in the San Bernardino County Transportation Authority (SBCTA) Contract to their agent or broker to confirm the ability to meet requirements.

AND

- ☐ Contractor certifies that the company or individual is fully prepared to secure the necessary insurance coverage and limits as detailed in the SBCTA Contract and comply with all insurance requirements.

OR

- ☐ Contractor has identified areas of conflict with the insurance requirements and will procure the required insurance per the requirements within 10 days of the Notice to Award.

\_\_\_\_\_  
Company/Individual Name

\_\_\_\_\_  
Print Name of Authorized Official

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email Address

**Broker Information:**  
Name:

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Address

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Phone Number

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Email Address

## CONTRACTOR QUESTIONNAIRE

**CONTRACTOR NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

### **1. BUSINESS ORGANIZATION**

1.1 How many years have you been in business? \_\_\_\_\_

1.2 How many years have you been in business under your current name? \_\_\_\_\_

1.2.1 Under what other names have you conducted business? \_\_\_\_\_  
\_\_\_\_\_

1.3 Name(s) and title(s) of person(s) authorized to execute contracts on behalf of your business. Attach appropriate documentation demonstrating signature authority (e.g. Corporate Resolution, Board Minutes, Operating Agreement, Articles of Organization, etc.).  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.4 If your business is a corporation, answer the following:

1.4.1 Date of incorporation: \_\_\_\_\_

1.4.2 State of incorporation: \_\_\_\_\_

1.4.3 California Secretary of State Entity ID Number: \_\_\_\_\_

1.4.4 Names and titles of corporate officers: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.5 If your business is a limited liability company, answer the following:

1.5.1 Date of formation: \_\_\_\_\_

1.5.2 State of formation: \_\_\_\_\_

1.5.3 California Secretary of State Entity ID Number: \_\_\_\_\_

1.5.4 Is LLC managed by managers or members? \_\_\_\_\_

1.5.5 Manager(s)/Member(s) name(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.6 If your business is a partnership, answer the following:

1.6.1 Date of organization: \_\_\_\_\_

1.6.2 Type of partnership: \_\_\_\_\_

1.6.3 California Secretary of State Entity ID Number: \_\_\_\_\_

1.6.4 Name(s) of general partner(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.7 If your business is individually owned, answer the following:

1.7.1 Date of organization: \_\_\_\_\_

1.7.2 Name of owner: \_\_\_\_\_

1.8 If the form of your business is other than those listed above, describe it and name the principals:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.9 Number of owned autos: \_\_\_\_\_

1.10 Number of employees: \_\_\_\_\_

## 2. LICENSING

2.1 List jurisdictions and trade categories in which your business is legally qualified to do business and indicate registration or license numbers, if applicable.

\_\_\_\_\_  
\_\_\_\_\_

2.2 List any other certifications held by your business, and the name under which they are held.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 3. EXPERIENCE

3.1 List the categories of work that your business normally performs with its own forces.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.2 List all contracts your business (individually or a joint venture in which your business or its principal(s) was a partner, member, and/or participant) has worked in the past three five years, giving the name of project, owner, owner's phone number, account manager, Contract amount, date of completion and percentage of the cost of the work performed with your own forces..

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.3 State average annual amount of \_\_\_\_\_ services performed during the past five years:

Year	_____	\$	_____
Year	_____	\$	_____
Year	_____	\$	_____
Year	_____	\$	_____

Year \_\_\_\_\_ \$ \_\_\_\_\_

- 3.4 List the contracts and/or projects your business has in progress, giving the name of the project, owner/contact, contract amount and scheduled completion.

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- 3.5 Has your business, under its current name or any previous names, ever failed to complete any work/contract awarded to it? If Yes, please explain. (Attach additional pages if necessary.)

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#### 4. CLAIMS AND COMPLAINTS

- 4.1 During the past five years, have any complaints or claims been filed with the Department of Fair Employment and Housing (DFEH) and/or the Department of Industrial Relations (DIR) against your business? If Yes, please describe. (Attach additional pages if necessary.)

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\_\_\_\_\_ [insert Contractor name] hereby certifies and affirms the truthfulness, completeness, and accuracy of the content of the statements and information above under penalty of perjury pursuant to the laws of the State of California and the United States of America.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Name and Title of Authorized Signatory

## **IRAN CONTRACTING ACT OF 2010 CERTIFICATION FORM**

In accordance with Public Contract Code Section 2203, a person (as defined in Public Contract Code Section 2202(e)) is ineligible to, and shall not, bid on, submit a proposal for, or enter into or renew, a contract with a public entity for goods or services of one million dollars (\$1,000,000) or more if, at the time of bid or proposal for a new contract or renewal of an existing contract that person:

- a. is identified on a list created pursuant to subsection (b) as a person engaging in investment activities in Iran as described in subsection (a) of Section 2202.5; or
- b. engages in investment activities in Iran as described in subdivision (b) of Section 2202.5.

**BY SUBMITTING THIS PROPOSAL OR BID AND SIGNING BELOW, THE PROPOSER/BIDDER IDENTIFIED BELOW CERTIFIES AS FOLLOWS (*REQUIRED*: SELECT ONE OF THE FOLLOWING):**

- ☐ In accordance with Public Contract Code Section 2204(a), Proposer/Bidder, at the time the proposal or bid is submitted, it is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person (as defined in Public Contract Code Section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person that engages in investment activities in Iran as described in subdivision (b) of Public Contract Code Section 2202.5.
- ☐ In accordance with Public Contract Code Section 2204(b), Proposer/Bidder is authorized to submit this bid or proposal pursuant to one of the following (*REQUIRED*: SELECT ONE OF THE FOLLOWING):
  - ☐ FOR USE ONLY BY PROPOSERS/BIDDERS GRANTED SPECIFIC PERMISSION BY SBCTA TO SUBMIT A PROPOSAL OR BID: Proposer/Bidder is authorized to submit this proposal or bid pursuant to Section 2203(c) and further certifies all of the following to be true: (1) the investment activities in Iran were made before July 1, 2010; (2) the investment activities in Iran have not been expanded or renewed after July 1, 2010; (3) the appropriate awarding body for SBCTA has determined it to be in the best interest of SBCTA to contract with proposer or bidder; and (4) Proposer/Bidder has adopted, publicized, and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran;
  - ☐ FINANCIAL INSTITUTIONS ONLY: Proposer/Bidder certifies it is authorized to submit this proposal or bid pursuant to Section 2203(d) and further certifies it is a financial institution that extends twenty million (\$20,000,000) or more in credit to another person for 45 days or more and the person using the credit to provide goods or services in the energy section of Iran is a person permitted to submit a bid or proposal pursuant to Section 2203(c).

Proposer/Bidder acknowledges and understands that making a false certification may subject



it to civil penalties, termination of existing contract, and ineligibility to bid or proposed on a contract for a period of three (3) years in accordance with Public Contract Code Section 2205.

**PROPOSER OR BIDDER INFORMATION:**

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**Company Name**

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**Address**

---

**City**

**State**

**Zip Code**

---

**Authorized Representative: Name**

**Title**

---

**Authorized Representative: Signature**

**Date**

---

**Phone**

**Email Address**

# **ATTACHMENT A**

# **CONTRACT**

**CONTRACT 24-1003062**

**BY AND BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

---

**FOR**

**I-215 BI-COUNTY/SEGMENT-5 LANDSCAPE PROJECT**

This contract ("Contract") effective on the Effective Date as defined herein, is by and between San Bernardino County Transportation Authority, ("SBCTA"), whose address is 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, California 92410-1715, and \_\_\_\_\_ ("CONTRACTOR") whose address is \_\_\_\_\_. SBCTA and CONTRACTOR are each a "Party" and collectively the "Parties" herein.

**RECITALS:**

**WHEREAS**, SBCTA has determined that it requires construction of the I-215 Bi-County/Segment-5 Landscape Project; and

**WHEREAS**, the work described herein cannot be performed by the employees of SBCTA; and

**WHEREAS**, CONTRACTOR has certified that they have the requisite personnel, experience, materials, and equipment and is fully capable and qualified to perform all work described herein identified herein; and

**WHEREAS**, CONTRACTOR desires to perform all work identified herein and to do so for the compensation and in accordance with the terms and conditions set forth in this contract.

**NOW, THEREFORE**, the Parties hereto agree as follows:

**ARTICLE 1. CONTRACT DOCUMENTS**

The complete Contract includes all of the following Contract Documents: the Contract Articles; Exhibit A – LAPM Exhibit 12-G (which includes Form FHWA -1273), attached to the contract; Invitation For Bids 24-1003062 (IFB) dated September 3, 2025; bid dated Month, Day, Year; California Department of Transportation Standard Plans, dated 2024; the Standard Specifications, dated 2024; 2015 Green Book; the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished; Drawings, entitled I-215 Landscape Final Approved Plans; Addenda No's. numbers; Project Plans dated July 21, 2025; and Performance and Payment Bonds.

## **ARTICLE 2. BONDS**

CONTRACTOR will furnish a Payment Bond, in the form provided by SBCTA in the IFB, in an amount equal to one hundred percent (100%) of the contract price, and a faithful Performance Bond, in the form provided by SBCTA in the IFB, in an amount equal to one hundred percent (100%) of the contract price, said bonds to be secured from a surety company satisfactory to SBCTA within ten (10) working days of the date of SBCTA's delivery to CONTRACTOR of the Notice of Award this Contract and prior to the commencement of work under this Contract. Bonds shall remain in full force and effect for a period of one (1) year following the date of filing of the Notice of Completion. Notwithstanding any other provision set forth in this Contract, performance by a Surety or Guarantor of any obligation of CONTRACTOR shall not relieve CONTRACTOR of any of its obligations thereunder.

Upon final acceptance of the project work by SBCTA, CONTRACTOR may obtain a release of the Performance Bond and Payment Bond if CONTRACTOR provides to SBCTA and maintains a Warranty Bond, in the form provided by SBCTA in the IFB, or such other security as SBCTA may approve in its sole discretion, that guarantees performance of Work required to be performed during the period following final acceptance of the Project work, including Warranty Work, and which shall also constitute a payment bond guaranteeing payment to persons performing such Work (the "Warranty Bond"). The Warranty Bond, if used, shall guarantee the performance of CONTRACTOR's warranties and warranties of its subcontractors and run in favor of and be enforceable by SBCTA, the California Department of Transportation, utility owners and local agencies (as applicable) for the warranty obligations under the Contract.

If used, the Warranty Bond shall be in an amount specified of ten (10) percent of the amount payable to CONTRACTOR under the Contract ("Warranty Bond Amount"). SBCTA will release the Warranty Bond upon the expiration of the Warranty Period, provided the following conditions have been met: (i) CONTRACTOR is not in default under this Contract and no event has occurred that, with the passage of time or the giving of notice, would constitute a default under this Contract; and (ii) SBCTA receives either (a) evidence satisfactory to SBCTA that all persons eligible to file a claim against the Warranty Bond have been fully paid and unconditional releases of liens and stop payment notices from all subcontractors, if any, that filed preliminary notice of a claim against the Warranty Bond; or (b) the statutory period for subcontractors to file a claim against the Warranty Bond has expired and no claims have been filed.

## **ARTICLE 3. PROMPT PAYMENT/RETENTION**

CONTRACTOR is required to pay all subcontractors for satisfactory performance of their work no later than seven days from the date CONTRACTOR receives payment from SBCTA. SBCTA shall hold retainage from CONTRACTOR of five percent (5%) from each invoice and shall make prompt and regular incremental acceptances of portions, as determined by SBCTA, of the contract work and pay retainage to the CONTRACTOR based on these acceptances. The CONTRACTOR or subcontractor(s) shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for

work satisfactorily completed and accepted including incremental acceptances of portions of the contract work. Any delay or postponement of payment may take place only for good cause and with SBCTA's prior written approval. Any violation of these provisions shall subject CONTRACTOR to the penalties, sanctions, and other remedies specified in section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the CONTRACTOR or subcontractor in the event of: a dispute involving late payment or nonpayment by the CONTRACTOR; deficient subcontractor performance; and/or non-compliance by a subcontractor. This Article applies to DBE and non-DBE subcontractors.

Attention is directed to the provisions in Sections 10262 and 10262.5 of the Public Contract Code concerning prompt payment to subcontractors.

SBCTA has adopted a prompt payment provision on all DOT-assisted contracts, to facilitate timely payment to all subcontractors/subconsultants in accordance with regulatory mandates. This provision requires a Contractor to issue payment to all subcontractors (DBEs and non-DBEs), for satisfactory performance of their contracts, no later than seven (7) days from receipt of each payment made to the Contractor by Department.

Commencing with the Contractor's second Pay Application Request/Invoice, the Contractor shall provide SBCTA with evidence in the form of a signed assurance that the Contractor has paid all subcontractors/subconsultants all amounts due for work that the subcontractor/subconsultant has satisfactorily performed. The statement of compliance, signed under penalty of perjury, may be included within the Pay Application document or as an attachment.

Attention is directed to the Prompt Payment Certification Form attached as Appendix C of these special provisions.

The Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be prepared on "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" Form 17-F and certified correct by the Contractor or the Contractor's authorized representative. The form shall be furnished to the engineer within ninety days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE trucking

companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month. This documentation shall be submitted on "Monthly DBE Trucking Verification" Form CEM-2404(F).

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

#### **ARTICLE 4. COMPENSATION**

4.1 SBCTA agrees to pay, and CONTRACTOR agrees to accept as full payment for the work outlined in the Contract documents, the sum of \$ enter dollar and cents amount **DOLLARS AND CENTS** ( ), including without limitation any compensation due for unit price work which shall be calculated as the actual number of such units performed multiplied by the unit price, subject to additions and deductions, if any, in accordance with said documents. Progress payments shall not be made more often than once each thirty (30) days, nor shall the amount paid be in excess of ninety-five percent (95%) of either the pro-rata amount due for completed work at the progress payment date or of the full payment amount of the Contract at time of completion. Payment requests shall not be deemed properly completed unless certified payrolls and any other mandatory submittals have been properly completed and submitted for each week worked during the time period covered by said payment request. Final payment will be made after acceptance of the Project. The Bid Schedule presented on the next page is incorporated into this Contract by this reference.

4.2 Pursuant to California Public Contract Code section 22300, CONTRACTOR has the option to deposit securities with an Escrow Agent acceptable to SBCTA as a substitute for retention earnings required to be withheld. Alternatively, CONTRACTOR may submit a written request to SBCTA, who shall make payments of the retention amount directly to the Escrow Agent. The market value of the securities deposited at the time of substitution shall be at least equal to the cash amount required to be withheld as retention under this Contract. CONTRACTOR shall be responsible for paying all fees incurred by the Escrow Agent in administering the Escrow Account. Securities eligible for investment under this section shall include those listed in section 16430 of the Government Code.

4.3 In addition, on any partial payment made after 95 percent of the work has been completed, SBCTA may reduce the amount withheld from payment pursuant to the requirements of this Article to such lesser amount as SBCTA determines is adequate security for the fulfillment of the balance of the work and other requirements of the

contract, but in no event will that amount be reduced to less than 125 percent of the estimated value of the work yet to be completed as determined by the Engineer. A reduction in retention will only be made upon the written request of the Contractor and shall be approved in writing by the surety on the Performance Bond and by the surety on the Payment Bond. The approval of the surety shall be submitted to SBCTA's Director of Project Delivery; the signature of the person executing the approval for the surety shall be properly acknowledged and the power of attorney authorizing the person to give that consent must either accompany the document or be on file with SBCTA.

**INSERT ACCEPTED BID**

**SCHEDULE HERE**

**AFTER AWARD OF**

**PROJECT**



## **ARTICLE 5. TAXES, DUTIES AND FEES**

Except to the extent expressly provided elsewhere in this Contract, CONTRACTOR shall pay when due and the compensation set forth in this Contract shall be inclusive of all: a) local, municipal, State, and federal sales and use taxes; b) excise taxes; c) taxes on personal property owned by CONTRACTOR; and d) all other governmental fees and taxes or charges of whatever nature applicable to CONTRACTOR to enable it to conduct business.

## **ARTICLE 6. AVAILABILITY OF FUNDS**

The award and performance of this Contract is contingent on the availability of funds. If funds are not appropriated and/or allocated and available to SBCTA for the continuance of work performed by the CONTRACTOR, work directly or indirectly involved may be suspended or terminated by SBCTA at the end of the period for which funds are available. When SBCTA becomes aware that any portion of work will or may be affected by a shortage of funds, it will promptly notify CONTRACTOR. Nothing herein shall relieve SBCTA from its obligation to compensate CONTRACTOR for work already performed pursuant to this Contract. No penalty shall accrue to SBCTA in the event this provision is exercised.

## **ARTICLE 7. PERMITS AND LICENSES**

CONTRACTOR agrees that he/she is currently the holder of a valid license as a CONTRACTOR in the State of California and that the license is the correct class of license for the work described in the project plans and specifications. CONTRACTOR further agrees to maintain such license throughout the entire duration of Contract without additional compensation from SBCTA. CONTRACTOR also agrees to keep current, as required by the "Notice to Bidders and Special Provisions," all current permits required throughout the duration of the Project.

## **ARTICLE 8. DOCUMENTATION AND RIGHT TO AUDIT**

CONTRACTOR shall provide SBCTA, the U.S. Department of Transportation (DOT), including but not limited to the Federal Transit or Federal Highway Administration, and the Comptroller General of the United States, or other authorized representatives or agents of SBCTA, access to CONTRACTOR's records which are directly related to this Contract for the purpose of inspection, auditing or copying. CONTRACTOR shall maintain all records related to this Contract in an organized way in the original format, electronic and hard copy, conducive to professional review and audit, for a period of three (3) years from the date of final payment by SBCTA, except in the event of litigation or settlement of claims arising out of this Contract in which case CONTRACTOR agrees to maintain records through the conclusion of all such litigation, appeals or claims related to this Contract. CONTRACTOR further agrees to maintain separate records for costs of work performed by change order. CONTRACTOR shall allow SBCTA, Caltrans, FHWA or FTA, or its representatives or agents to reproduce any materials as reasonably necessary.

## **ARTICLE 9. SCHEDULE**

CONTRACTOR agrees to complete the work within the time period as stipulated in the Special Provisions. CONTRACTOR shall incur no costs (excluding insurance and bonds) and shall not perform or furnish any work, services or equipment under this Contract, unless and until SBCTA has issued a written Notice To Proceed (NTP).

## **ARTICLE 10. NONDISCRIMINATION**

This contract is subject to the California Fair Employment and Housing Act, Government Code Sections 12900 et seq. The CONTRACTOR and any subcontractor(s) shall not discriminate on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status in the performance of this contract. Failure by the contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this contract, or such other remedy, as SBCTA deems appropriate.

## **ARTICLE 11. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION**

### **11.1 Definitions. As used in this clause—**

Covered area means the geographical area described in the solicitation for this contract.

Deputy Assistant Secretary means the Deputy Assistant Secretary for the Office of Federal Contract Compliance Programs, U.S. Department of Labor, or a designee.

Employer identification number means the Federal Social Security number used on the employer's quarterly Federal tax return, U.S. Treasury Department Form 941.

Gender identity has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBTFAQs.html](http://www.dol.gov/ofccp/LGBT/LGBTFAQs.html).

Minority means--

- (1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- (2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);
- (3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and
- (4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

Sexual orientation has the meaning given by the Department of Labor's Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBTJFAQs.html](http://www.dol.gov/ofccp/LGBT/LGBTJFAQs.html).

- 11.2 If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$ 10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.
- 11.3 If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.
- 11.4 The Contractor shall implement the affirmative action procedures in subparagraphs (1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
- (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under paragraph (2) of this clause.

(6) Disseminate the Contractor's equal employment policy by-

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment

to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations

11.5 Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause.

11.6 In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

11.7 The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

11.7.1 Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

11.7.2 Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

11.7.3 Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

11.7.4 Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

11.7.5 Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph 11.4(2) of this clause.

11.7.6 Disseminate the Contractor's equal employment policy by –

- (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;
- (ii) Including the policy in any policy manual and in collective bargaining agreements;
- (iii) Publicizing the policy in the company newspaper, annual report, etc.;
- (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
- (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

11.7.7 Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

11.7.8 Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media.

Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

11.7.9 Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

11.7.10 Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

11.7.11 Validate all tests and other selection requirements where required under 41 CFR 60-3.

11.7.12 Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

11.7.13 Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

11.7.14 Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

11.7.15 Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

11.7.16 Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

11.8 The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs 11.4(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs 11.4(1) through (16) of this clause, provided the Contractor –

11.8.1 Actively participates in the group;

11.8.2 Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

11.8.3 Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

11.8.4 Makes a good-faith effort to meet its individual goals and timetables; and

11.8.5 Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

11.9 A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of this clause if a particular group is employed in a substantially disparate manner.

11.10 The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11.11 The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts.

11.12 The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause.

11.13 The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph 11.4(1) through (16) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of federal regulations or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

11.14 The Contractor shall designate a responsible official to –

11.14.1 Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

11.14.2 Submit reports as may be required by the Government; and

11.14.3 Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.



11.15 Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

## **ARTICLE 12. CONFLICT OF INTEREST**

CONTRACTOR agrees that it presently has no interest financial or otherwise and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Work required under this Contract or to be contrary to the interests of SBCTA as to the Project. CONTRACTOR further agrees that in the performance of this Contract, no person having any such interest shall be employed. CONTRACTOR is obligated to fully disclose to SBCTA, in writing, conflict of interest issues as soon as they are known to CONTRACTOR.

## **ARTICLE 13. REPRESENTATIONS**

All work supplied by CONTRACTOR under this Contract shall be supplied by personnel who are qualified, careful, skilled, experienced and competent in their respective trades or professions. CONTRACTOR agrees that the Work performed shall conform to all drawings, plans and specifications herein.

## **ARTICLE 14. PROPRIETARY RIGHTS/CONFIDENTIALITY**

14.1 If, as part of this Contract, CONTRACTOR is required to produce materials, documents data, or information ("Products"), then CONTRACTOR, if requested by SBCTA, shall deliver to SBCTA the original of all such products, which shall become the property of SBCTA.

14.2 All materials, documents, data or information obtained from SBCTA's data files or any SBCTA-owned medium furnished to CONTRACTOR in the performance of this Contract will at all times remain the property of SBCTA. Such data or information may not be used or copied for direct or indirect use outside of this Project by CONTRACTOR without the express written consent of SBCTA.

14.3 Except as reasonably necessary for the performance of Work, CONTRACTOR agrees that it, its employees, agents, and subcontractors will hold in confidence and not divulge to third parties without prior written consent of SBCTA, any information obtained by CONTRACTOR from or through SBCTA in connection with CONTRACTOR's performance of this Contract, unless: (a) the information was known to CONTRACTOR prior to obtaining same from SBCTA or (b) the information was obtained at the time of disclosure to CONTRACTOR, or thereafter becomes part of the public domain, but not as a result of an unauthorized disclosure of CONTRACTOR or its employees, agents, or subcontractors; or (c) the information was obtained by CONTRACTOR from a third party who did not receive the same, directly or indirectly, from SBCTA and who had, to CONTRACTOR's knowledge and belief, the right to disclose the same. Any materials and information referred to in this Article which are produced by CONTRACTOR for SBCTA in the performance and completion of CONTRACTOR's Work under this Contract shall remain confidential until released in writing by SBCTA, except to the extent such materials and information become a part of public domain information through no fault of CONTRACTOR, or its employees or

agents.

- 14.4 CONTRACTOR shall not use SBCTA's name or photographs of the Project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without first receiving the express written consent of SBCTA.
- 14.5 All press releases relating to the Project or this Contract, including graphic display information to be published in newspapers, magazines, and other publications, are to be made only by SBCTA unless otherwise agreed to in writing by the Parties. CONTRACTOR shall not release any reports, information or promotional material related to this Contract for any purpose without prior written approval of SBCTA.
- 14.6 Applicable patent rights provisions regarding rights to inventions shall be included in the Contract as appropriate (48 CFR 27, Subpart 27.3, Patent Rights under Government Contracts for federal-aid contracts).
- 14.7 CONTRACTOR, its employees, agents and subcontractors shall be required to comply with SBCTA's Confidentiality Policy; anyone who may have access to Personally Identifiable Information ("PII") and/or Sensitive Security Information ("SSI") will be required to execute a Confidentiality Agreement.

## **ARTICLE 15.       TERMINATION**

- 15.1 Termination for Convenience. SBCTA shall have the right at any time without cause, to terminate further performance of Work by giving thirty (30) calendar days' written notice to CONTRACTOR specifying the date of termination. On the date of such termination stated in said notice, CONTRACTOR shall promptly discontinue performance of Services and shall preserve work in progress and completed Work, pending SBCTA's instruction, and shall turn over such Work in accordance with SBCTA's instructions.
- 15.1.1 CONTRACTOR shall deliver to SBCTA all deliverables prepared by CONTRACTOR or its subcontractors or furnished to CONTRACTOR by SBCTA. Upon such delivery, CONTRACTOR may then invoice SBCTA for payment in accordance with the terms herein.
- 15.1.2 If CONTRACTOR has fully and completely performed all obligations under this Contract up to the date of termination, CONTRACTOR shall be entitled to receive from SBCTA as complete and full settlement for such termination a pro rata share of the contract cost and a pro rata share of any fixed fee for such Services satisfactorily executed to the date of termination.
- 15.1.3 CONTRACTOR shall be entitled to receive the actual cost incurred by CONTRACTOR to return CONTRACTOR's field tools and equipment, if any, to it or its suppliers' premises, or to turn over work in progress in accordance with SBCTA's instructions, plus the actual cost necessarily incurred in effecting the termination.
- 15.2 Termination for Cause. In the event CONTRACTOR shall file a petition in bankruptcy court, or shall make a general assignment for the benefit of its creditors, or if a petition in bankruptcy

court shall be filed against CONTRACTOR or a receiver shall be appointed on account of its insolvency, or if CONTRACTOR shall default in the performance of any express obligation to be performed by it under this Contract and shall fail to immediately correct (or if immediate correction is not possible, shall fail to commence and diligently continue action to correct) such default within ten (10) calendar days following written notice, SBCTA may, without prejudice to any other rights or remedies SBCTA may have, (a) hold in abeyance further payments to CONTRACTOR; (b) stop any Work of CONTRACTOR or its subcontractors related to such failure until such failure is remedied; and/or (c) terminate this Contract by written notice to CONTRACTOR specifying the date of termination. In the event of such termination by SBCTA, SBCTA may take possession of the deliverables and finish Services by whatever method SBCTA may deem expedient. A waiver by SBCTA of one default of CONTRACTOR shall not be considered to be a waiver of any subsequent default of CONTRACTOR, nor be deemed to waive, amend, or modify any term of this Contract.

15.2.1 CONTRACTOR shall deliver to SBCTA all finished and unfinished products prepared under this Contract by CONTRACTOR or its subcontractors or furnished to CONTRACTOR by SBCTA within ten (10) working days of said notice.

15.3 All claims for compensation or reimbursement of costs under any of the foregoing provisions shall be supported by documentation submitted to SBCTA, satisfactory in form and content to SBCTA and verified by SBCTA. In no event shall CONTRACTOR be entitled to any prospective profits or any damages because of such termination.

## **ARTICLE 16. STOP WORK ORDER**

Upon failure of CONTRACTOR or its subcontractors to comply with any requirements of this Contract, SBCTA shall have the right to stop any or all Work affected by such failure until such failure is remedied or to terminate this Contract in accordance with the Termination provision herein.

## **ARTICLE 17. CLAIMS**

SBCTA shall not be bound to any adjustments in the Contract amount or schedule unless expressly agreed to by SBCTA in writing. SBCTA shall not be liable to CONTRACTOR for any claim asserted by CONTRACTOR after final payment has been made under this Contract.

Per Public Contract Code (PCC) § 9204:

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240 ) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100 ) of Part 2, and Article 1.5 (commencing with Section 20104 ) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) “Claim” means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) “Contractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000 ) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3)(A) “Public entity” means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) “Public entity” shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code .

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) “Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000 ) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d)(1)(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2)(A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent

third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

## **ARTICLE 18. INSURANCE**

18.1 CONTRACTOR shall furnish SBCTA with original Certificates of Insurance, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page(s) of the CGL policy listing all policy endorsements, within 10 days after SBCTA issues a notice of award. SBCTA reserves the right to require full-certified copies of all Insurance coverages and endorsements. Prior to commencing the Work, at all times during the performance of the Work, and for such additional periods as required herein, CONTRACTOR shall, at CONTRACTOR's sole expense, procure and maintain insurance coverage with the following minimum requirements, and shall require all subcontractors of every tier performing any portion of the Work to procure and maintain such insurance as specified below:

18.2 Commercial General Liability Insurance. The policy must include the following:

- CONTRACTOR shall maintain a commercial general liability policy written on an occurrence form that shall provide coverage at least as broad as the coverage provided by ISO form CG 00 01. The Indemnified Parties shall be named, by specific endorsement, as additional insureds using ISO form CG 20 10 10 01 and ISO form CG 20 37 10 01, or their respective equivalent forms, to include completed operations coverage. and if necessary excess/umbrella commercial liability insurance, with a combined limit of liability of not less than **\$5,000,000 each occurrence.**
- The policy shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability (including coverage to the maximum extent possible for the indemnifications in this Contract), premises-operations (including explosion, collapse and underground coverage), duty to defend in addition to (without reducing) the limits of the policy(ies), and products and completed operations.
  - \$2,000,000 per occurrence limit for property damage or bodily injury
  - \$1,000,000 per occurrence limit for personal injury and advertising injury
  - \$2,000,000 per occurrence limits for products/completed operations coverage (ISO Form 20 37 10 01) if SBCTA determines it is in SBCTA's best interest to require such coverage.
- If a general aggregate applies, it shall apply separately to this project/location. The project name must be indicated under "Description of Operations/Locations" (ISO Form CG 25 03 or CG 2504).
- Coverage is to be on an "occurrence" form. "Claims made" and "modified occurrence" forms are not acceptable.
- A copy of the declaration page or endorsement page listing all policy endorsements for the CGL policy must be included.

All subcontractors of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the CGL insurance coverage with limits not less than:

- Each occurrence limit: \$1,000,000
- General aggregate limit: \$2,000,000

- Personal injury and advertising limit \$1,000,000
- Products-completed operations aggregate limit \$2,000,000

18.3 Umbrella/Excess CGL Insurance. The policy must include the following:

If the CONTRACTOR elects to include an umbrella or excess policy to cover any of the total limits required beyond the primary commercial general liability policy limits and/or the primary commercial automobile liability policy limits, then the policy must include the following:

- The umbrella or excess policy shall follow form over the CONTRACTOR's primary general liability coverage and shall provide a separate aggregate limit for products and completed operations coverage.
- The umbrella or excess policy shall not contain any restrictions or exclusions beyond what is contained in the primary policy.
- The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
- The umbrella or excess policy must also extend coverage over the automobile policy if it is to be used in combination with the primary automobile policy to meet the total insurance requirement limits.

There shall be no statement limiting the coverage provided to the parties listed as additional insureds or as indemnitees below.

18.4 Commercial Auto Insurance. The policy must include the following:

- A total limit of liability of not less than **\$5,000,000** each accident. This total limit of liability may be met by combining the limits of the primary auto policy with an umbrella or excess policy in accordance with subparagraph 4 (Umbrella/Excess CGL) of Section A of this Article.
- Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the CONTRACTOR services.
- Combined Bodily Injury and Property Damage Liability insurance--The commercial automobile liability insurance shall be written on the most recent edition of ISO Form CA 00 01 or equivalent acceptable to SBCTA.

18.5 Workers' Compensation/Employer's Liability Insurance. The policies must include the following:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident - \$1,000,000 per accident
- Bodily Injury by disease - \$1,000,000 policy limit/\$1,000,000 each employee

Such policies shall contain a waiver of subrogation in favor of the parties named as Indemnitees below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance of the Work by CONTRACTOR or any subcontractor of any tier. All subcontractors of any tier performing any portion of the Work for CONTRACTOR shall also obtain and maintain the same insurance coverage as specified in this subparagraph, with a waiver of subrogation in favor of CONTRACTOR and all parties named as Indemnitees in Article



19 below. SBCTA and CONTRACTOR must be certificate holders and must be provided at least 30 days' advance notice of cancellation, unless the cancellation is for non-payment, then at least 10 days advance notice of cancellation shall be provided.

18.6 Professional Liability. Intentionally Omitted

18.7 Builder's Risk Insurance. Intentionally Omitted

18.8 Contractor's Pollution Liability Insurance. The policy must include the following:

- \$1,000,000 per claim or occurrence limits/\$2,000,000 in the aggregate
- If the services involve mold identification / remediation, the policy shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.
- If the services involve lead-based paint or asbestos identification/remediation, the policy shall not contain lead-based paint or asbestos exclusions.

18.9 Railroad Protective Liability Insurance. - Intentionally Omitted

18.10 General Provisions

18.10.1 Qualifications of Insurance Carriers. If policies are written by insurance carriers authorized and admitted to do business in the state of California, then the insurance carriers must have a current A.M. Best rating of A-VIII or better and if policies are written by insurance carriers that are non-admitted but authorized to conduct business in the state of California, then they must meet the current A.M. Best rating of A-X or better, unless otherwise approved in writing by SBCTA.

18.10.2 Additional Insured Coverage. All policies, except those for Workers' Compensation and Professional Liability insurance, shall be endorsed by ISO Form CG 20 10 11 85, or if not available, then ISO Form CG 20 38, to name San Bernardino County Transportation Authority (SBCTA), State of California (Caltrans), and their officers, directors, members, employees, and agents, as additional insureds ("Additional Insureds"). With respect to general liability arising out of or connected with work or operations performed by or on behalf of the CONTRACTOR under this Contract, coverage for such Additional Insureds shall not extend to liability to the extent prohibited by section 11580.04 of the Insurance Code. The additional insured endorsements shall not limit the scope of coverage for SBCTA to vicarious liability but shall allow coverage for SBCTA to the full extent provided by the policy.

18.10.3 Proof of Coverage. Certificate of insurance on the latest ISO Accord form shall be provided to SBCTA's Procurement Analyst prior to issuance of the NTP or prior to commencing any Work, as specified by SBCTA. Certificate(s) of insurance, as evidence of the required insurance shall: be executed by a duly authorized representative of each insurer; show compliance with the insurance requirements set forth in this Article; set forth deductible amounts applicable to each policy; list all exclusions which are added by endorsement to each policy; and also include the Contract Number and the SBCTA Project name on the face of the certificate. If requested in writing by SBCTA, CONTRACTOR

shall submit complete copies of all required insurance policies within ten (10) business days of a written request by SBCTA.

18.10.4 Deductibles and Self-Insured Retention. Regardless of the allowance of exclusions or deductibles by SBCTA, CONTRACTOR shall be responsible for any deductible or self-insured retention (SIR) amount and shall warrant that the coverage provided to SBCTA is consistent with the requirements of this Article. CONTRACTOR will pay, and shall require its subcontractors to pay, all deductibles, co-pay obligations, premiums and any other sums due under the insurance required in this Article. Any deductibles or self-insured retentions must be declared to and approved in writing by SBCTA. Without SBCTA's expressed written approval, no deductibles or SIR will be allowed. At the option of SBCTA, if the deductible or SIR is approved and it is greater than \$10,000 or one (1) percent of the amount of coverage required under this Contract, whichever is less, the CONTRACTOR shall guarantee that either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to SBCTA, its directors, officials, officers, employees and agents; or, (2) the CONTRACTOR shall procure a bond guaranteeing the amount of the deductible or self-insured retention. SBCTA shall have the right to review any and all financial records that SBCTA, in its sole discretion, deems necessary to approve any deductible or SIR. SBCTA will have the right, but not the obligation, to pay any deductible or SIR due under any insurance policy. If SBCTA pays any sums due under any insurance required above, SBCTA may withhold said sums from any amounts due to CONTRACTOR. The Contractor's policies will neither obligate nor prohibit SBCTA or any other Additional Insured, from paying any portion of any Contractor's deductible or SIR.

18.10.5 CONTRACTOR's and Subcontractors' Insurance Will Be Primary. All policies required to be maintained by the CONTRACTOR or any subcontractor, with the exceptions of Professional Liability, Pollution Liability and Worker's Compensation, shall be endorsed, with a form at least as broad as ISO Form CG 20 01 04 13, to be primary coverage, and any coverage carried by any of the Additional Insureds shall be excess and non-contributory. Further, none of CONTRACTOR's or subcontractors' pollution, automobile, general liability or other liability policies (primary or excess) will contain any cross-liability exclusion barring coverage for claims by an additional insured against a named insured.

18.10.6 Waiver of Subrogation Rights. To the fullest extent permitted by law, CONTRACTOR hereby waives all rights of recovery under subrogation against the Additional Insureds named herein, and any other CONTRACTOR, subcontractor or sub-subcontractor performing work or rendering services on behalf of SBCTA, in connection with the planning, development and construction of the Project. To the fullest extent permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its subcontractors of every tier. CONTRACTOR shall require all of the policies and coverages required in this Article to waive all rights of subrogation against the Additional Insureds (ISO Form CG 24 04 05 09). Such insurance and coverages provided shall not prohibit CONTRACTOR from waiving the right of subrogation prior to a loss or claim.

18.10.7 Cancellation. If any insurance company elects to cancel or non-renew coverage for any reason, CONTRACTOR will provide SBCTA thirty (30) days' prior written notice of such cancellation or nonrenewal. If the policy is cancelled for nonpayment of premium, CONTRACTOR will provide SBCTA ten (10) days' prior written notice. In any event, CONTRACTOR will provide SBCTA with a copy of any notice of termination or notice of any other change to any insurance coverage required herein which CONTRACTOR

receives within one business day after CONTRACTOR receives it by submitting it to SBCTA at insurance@gosbcta.com to the attention of SBCTA's Procurement Analyst, and by depositing a copy of the notice in the U.S. Mail in accordance with the notice provisions of this Contract.

18.10.8 Enforcement. SBCTA may take any steps as are necessary to assure CONTRACTOR's compliance with its insurance obligations as identified within this Article. Failure to continuously maintain insurance coverage as provided herein is a material breach of contract. In the event the CONTRACTOR fails to obtain or maintain any insurance coverage required, SBCTA may, but is not required to, secure any coverage SBCTA deems necessary to fill the gap caused by the lapse in CONSULTANT's coverage and charge the expense to the CONTRACTOR or withhold such expense from amounts owed CONTRACTOR, or terminate this Contract. The insurance required or provided shall in no way limit or relieve CONTRACTOR of its duties and responsibility under the Contract, including but not limited to the obligations to indemnify, defend and hold harmless the Indemnitees named below. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude SBCTA from taking other actions available to it under any other provision of the Contract or law. Nothing contained herein shall relieve CONTRACTOR or any subcontractor of any tier of their obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract.

18.10.9 No Waiver. Failure of SBCTA to enforce in a timely manner any of the provisions of this Article shall not act as a waiver to enforcement of any of these provisions at a later date.

18.10.10 Subcontractors' Insurance. Insurance required of the CONTRACTOR shall be also provided by subcontractors or by CONTRACTOR on behalf of all subcontractors to cover their services performed under this Contract. CONTRACTOR may reduce types and the amounts of insurance limits provided by subcontractors to be proportionate to the amount of the subcontractor's contract and the level of liability exposure for the specific type of work performed by the subcontractor. CONTRACTOR shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to subcontractor.

18.10.11 Higher limits. The Insurance obligations under this agreement shall be the greater of 1- all the Insurance coverage and limits carried by or available to the Vendor; or 2- the minimum Insurance requirements shown in this agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to SBCTA. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the indemnity or other obligations of the Vendor under this agreement.

18.10.12 Non-Limitation of Insurance Requirements. The insurance coverage provided and limits required under this Contract are minimum requirements and are not intended to limit the Contractor's indemnification obligations under the Contract, nor do the indemnity obligations limit the rights of the Indemnified Parties to the coverage afforded by their insured status. To the extent required by Law in connection with Work to be performed, the Contractor shall obtain and maintain, or cause to be obtained and maintained, in addition to the insurance coverage expressly required under this Contract, such other insurance policies for such amounts, for such periods of time and subject to such terms, as required by Law and any other agreements with which the Contractor is required to comply,

including any Third-Party Agreements. Liability insurance coverage will not be limited to the specific location designated as the Site, except that if the Contractor arranges project-specific general liability, excess liability, or workers' compensation coverage, limitations of coverage to the Site will be permitted subject to SBCTA approval and use of the broadest available site-specific endorsements. No liability policy will contain any provision or definition that would serve to eliminate so-called "third-party-over action" claims, including any exclusion for bodily injury to an employee of the insured or of any Subcontractor. The CONTRACTOR acknowledges and will at all times comply with the provisions of Labor Code Section 3700 which require every employer in the State to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of that code.

18.10.13 Project Specific Insurance. All insurance coverage required to be provided by CONTRACTOR, with the exception of automobile liability and worker's compensation, shall apply specifically and exclusively for the Project and extend to all aspects of the Work, with coverage limits dedicated solely to the Project. Use of other insurance programs is acceptable, provided that coverage under such programs provides dedicated Project-specific limits and identified premiums and meets all requirements described in contract.

18.10.14 No Representations or Warranties. SBCTA makes no representation or warranty that the coverage, limits of liability, or other terms specified for the insurance policies required under this contract are adequate to protect the CONTRACTOR against its undertakings under this Contract or its liability to any third party, nor will they preclude SBCTA from taking any actions as are available to it under this Contract or otherwise at law.

18.10.15 Review of Coverage. SBCTA may at any time review the coverage, form, and amount of insurance required under this contract, and may require the CONTRACTOR to make changes in such insurance reasonably sufficient in coverage, form, and amount to provide adequate protection against the kind and extent of risk that exists at that time. SBCTA may change the insurance coverages and limits required under this contract by notice to the CONTRACTOR, whereupon the CONTRACTOR will, within sixty (60) days of such notice date, procure the additional and/or modified insurance coverages. Upon such change any additional cost (at actual cost) from such change will be paid by SBCTA and any reduction in cost will reduce the Contract Price pursuant to a Change Order.

## **ARTICLE 19. INDEMNITY**

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by SBCTA) and hold harmless San Bernardino County Transportation Authority, Caltrans, and their respective officers, directors, members, employees, contractors, agents and volunteers (collectively the "Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors, or omissions of any person and for any costs or expenses incurred by the Indemnitees on account of any claim except where such indemnification is prohibited by law. To the extent permitted by law, CONTRACTOR's duty to defend and indemnification obligations shall apply regardless of the existence or degree of fault of any of the Indemnitees. The duty of CONTRACTOR and its insurers to provide a defense shall be immediate upon receipt of a written tender of defense from any of the Indemnitees, notwithstanding any subsequent allocation of defense costs that may be required by law. CONTRACTOR's indemnification obligation applies to the "passive" negligence of any of the Indemnitees, but does not apply to the "sole" or "active" negligence or "willful misconduct" of any of the Indemnitees within the meaning of Civil Code section 2782.

## **ARTICLE 20. OWNERSHIP OF DOCUMENTS**

All deliverables, including but not limited to, drawings, reports, worksheets, and other data developed by CONTRACTOR under this Contract shall become the property of SBCTA when prepared, whether delivered to SBCTA or not.

## **ARTICLE 21. RECORD INSPECTION AND AUDITING**

SBCTA, or any of its designees, representatives or agents, including but not limited to the U.S. Department of Transportation, Federal Highway Administration or Federal Transit Administration, shall at all times have access during normal business hours to CONTRACTOR's operations and products, wherever they are in preparation or progress, and CONTRACTOR shall provide sufficient, safe and proper facilities for such access and inspection thereof. Inspection or lack of inspection by SBCTA shall not be deemed to be a waiver of any rights to require CONTRACTOR to comply with the Contract or to subsequently reject and unsatisfactory Work or products.

## **ARTICLE 22. INDEPENDENT CONTRACTOR**

CONTRACTOR is and shall be at all times an independent contractor. Accordingly, all Work provided by CONTRACTOR shall be done and performed by CONTRACTOR under the sole supervision, direction and control of CONTRACTOR. SBCTA shall rely on CONTRACTOR for results only and shall have no right at any time to direct or supervise CONTRACTOR or CONTRACTOR's employees in the performance or as to the manner, means and methods by which work is to be performed. All personnel furnished by CONTRACTOR pursuant to this Contract and all representatives of CONTRACTOR shall be and remain the employees or agents of CONTRACTOR or of CONTRACTOR's subcontractors at all times and shall not at any time or for any purpose whatsoever be considered employees or agents of SBCTA.

## **ARTICLE 23. ATTORNEY'S FEES**

If any legal action is instituted to enforce or declare any party's rights under the Contract, each Party, including the prevailing Party, must bear its own costs and attorney's fees. This Article shall not apply to those costs and Attorney's fees directly arising from any third party legal action against a Party hereto and payable under the "Indemnity" provision of the Contract.

## **ARTICLE 24. GOVERNING LAW AND VENUE**

This Contract shall be subject to the law and jurisdiction of the State of California. The Parties acknowledge and agree that this Contract was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The Parties agree that the venue for any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County. Each Party hereby waives any law or rule of court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

## **ARTICLE 25. FEDERAL, STATE AND LOCAL LAWS**

CONTRACTOR warrants that in performance of this Contract, it shall comply with all applicable federal, State and local laws, ordinances, rules and regulations.

## **ARTICLE 26. PRECEDENCE**

In case of a discrepancy among the Contract Documents, the order of precedence shall be as noted in the Notice to Bidders and Special Provisions

## **ARTICLE 27. COMMUNICATIONS AND NOTICES**

Notices sent by mail shall be by United States Mail, postage paid, certified mail (return receipt requested). Any and all notices permitted or required to be given hereunder shall be deemed duly given and received when: (a) upon actual delivery, if delivery is personally made, or if made by fax or email during regular business hours; (b) the first business day following delivery by fax or email when made outside regular business hours; or (c) the fourth business day following deposit of such notice into the United States Mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Parties may designate from time to time by a notice given in accordance with this Article. CONTRACTOR shall notify SBCTA of any changes within ten (10) business days of the change.

<b>To CONTRACTOR</b>	<b>To SBCTA</b>
	<b>San Bernardino County Transportation Authority</b>
	<b>1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor</b>
	<b>San Bernardino, CA 92410-1715</b>
<b>Attn:</b>	<b>Attn:</b>
<b>Email:</b>	<b>Email:</b>
<b>2<sup>nd</sup> Contact:</b>	<b>cc: Procurement Manager</b>
<b>Email:</b>	<b>Email: <a href="mailto:procurement@gosbcta.com">procurement@gosbcta.com</a></b>
<b>Phone:</b>	<b>Phone: (909) 884-8276</b>

## **ARTICLE 28. FEDERAL CHANGES**

CONTRACTOR shall at all times comply with all applicable Federal Highway Administration regulations, policies, procedures and directives, including without limitation those listed directly or by reference in this Contract, as they may be amended time to time through the term of this Contract. CONTRACTOR's failure to comply shall constitute a material breach of Contract.

## **ARTICLE 29. LIQUIDATED DAMAGES**

Should CONTRACTOR fail to complete all work within the time specified herein, including any written authorized changes, the actual damages to SBCTA for the delay will be difficult or impossible to determine. Therefore, in lieu of actual damages, CONTRACTOR shall pay SBCTA the sum of \$6,700.00 per each calendar day of delay as identified in the weekly statement of working days issued by SBCTA. SBCTA shall not withhold liquidated damages if the delay is

determined by SBCTA to be excusable in accordance with the Force Majeure article of this Contract. SBCTA may extend the period of performance of this Contract when in its sole judgment, sufficient justification to do so.

## **ARTICLE 30. ASSIGNMENT**

CONTRACTOR agrees not to sell, transfer, or otherwise dispose of any contract part either voluntarily or by operation of law without prior written consent from SBCTA.

## **ARTICLE 31. SUBCONTRACTS**

31.1 CONTRACTOR shall perform with its own organization contract work amounting to not less **than 30 percent** (or a greater percentage if specified elsewhere in the Contract) of the total original contract price, excluding any specialty items designated by SBCTA. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by CONTRACTOR's own organization (23 CFR § 635.116).

31.1.1 "Its own organization" shall be construed to include only workers employed and paid directly by the prime CONTRACTOR and equipment owned or rented by the prime CONTRACTOR, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime CONTRACTOR.

31.1.2 "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract. The contract amount upon which the requirements set forth in this Contract is computed includes the cost of material and manufactured products, which are to be purchased or produced by the CONTRACTOR under the contract provisions.

31.2 CONTRACTOR shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the Contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as SBCTA determines is necessary to assure the performance of the Contract.

31.3 No portion of the Contract shall be sublet, assigned or otherwise disposed of except with the prior written consent of SBCTA, or authorized representative, and such consent when given shall not be construed to relieve CONTRACTOR of any responsibility for the fulfillment of the contract. Written consent will be given only after SBCTA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. CONTRACTOR does not have the right to make any substitutions of any subcontractor listed in its Bid, except in accordance with the State of California Public Contract Code, section 4100 et. seq. SBCTA's consent to substitution shall not be deemed to relieve CONTRACTOR of its obligation to fully comply with the requirements of this Contract. CONTRACTOR shall be responsible for all acts and omissions of its employees, subcontractors and their employees. CONTRACTOR is responsible for coordinating all work performed by the subcontractors. SBCTA reserves the right, but not the obligation, to review the subcontractor agreements for this project and to

require any modifications so as to conform to the requirements set forth in this Contract.

## **ARTICLE 32. COORDINATION WITH OTHER CONTRACTS**

SBCTA may undertake or award other contracts for work, and CONTRACTOR shall cooperate fully with the other contractors' and SBCTA's employees or agents and carefully fit its own work to such additional work as may be directed by SBCTA. CONTRACTOR shall not commit or permit any act which will interfere with the performance of work by any other contractor or by SBCTA.

## **ARTICLE 33. PREVAILING WAGE REQUIREMENTS**

33.1 All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics.

33.2 Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions.

## **ARTICLE 34. SAFETY**

34.1 In the performance of this Contract, CONTRACTOR shall comply with all applicable federal, State, and local laws governing safety, health, and sanitation (23 CFR § 635.108). The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as SBCTA may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. It is a condition of this Contract, and shall be made a condition of each subcontract which the CONTRACTOR enters into pursuant to this Contract, that CONTRACTOR and any subcontractor shall not permit any employee in performance of this Contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3704, 3705).

34.2 Pursuant to 29 CFR 1926.3, it is a condition of this Contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3704, 3705).



## **ARTICLE 35.      DISADVANTAGED BUSINESS ENTERPRISE**

- 35.1 SBCTA, as a recipient of federal financial assistance, is required to implement a Disadvantaged Business Program in accordance with Federal regulation 49 CFR Part 26, issued by the U.S. Department of Transportation (DOT). SBCTA has set a contract specific goal of 22% for this project. CONTRACTOR must furnish all documentation satisfactory to SBCTA that the work committed to DBEs was actually performed by DBEs. Requests for progress payments must include a summary of payments (Caltrans form Exhibit 9-F) actually made to DBEs during the invoice period, which includes a total of all payments made to all subcontractors under this Contract. DBE participation shall be credited toward the DBE contract goal only when payments are actually made to DBE firms. CONTRACTOR shall submit Exhibit 9-F per the Exhibit 9-F Instructions. Upon completion of the Contract, the CONTRACTOR shall complete Form 317, "Final Report-Utilization of DBE First-Tier Subcontractors" and certify that the information contained in Form 317 is true and correct and submit the form with their final invoice.
- 35.2 Should the termination or substitution of a DBE subcontractor be necessary, CONTRACTOR shall submit a written request to SBCTA prior to any substitution taking place. If a listed DBE subcontractor is terminated, CONTRACTOR shall make Good Faith Efforts to find another certified DBE subcontractor to substitute for the original DBE subcontractor. The substituted DBE must perform at least the same amount of work as the original DBE under the Contract and to the extent needed to meet the DBE goal. The substituted DBE must be certified as a DBE by the CUCP at the time of request is made for the substitution. Substitution requests, whether for a DBE or non-DBE subcontractor, shall be in accordance with the California Public Contract Code section 4107 et. seq.
- 35.3 Should a certified DBE subcontractor become decertified during the term of the Contract, the CONTRACTOR shall notify SBCTA in writing within 30 calendar days of the change and include the date of decertification. If a subcontractor becomes a certified DBE during the term of the Contract, the CONTRACTOR shall notify SBCTA in writing within 30 calendar days of certification and include a copy of the certification.
- 35.4 CONTRACTOR shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by CONTRACTOR to carry out these requirements is material breach of this Contract, which may result in the termination of this Contract or such other remedy, as SBCTA may deem appropriate.

## **ARTICLE 36.      NONSEGREGATED FACILITIES**

- 36.1 As prescribed by 41 CFR 60-1.8, CONTRACTOR must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. CONTRACTOR may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. CONTRACTOR's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated.
- 36.2 The term "facilities" means any waiting rooms, work areas, restrooms, washrooms,

restaurants and other eating areas, time-clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities. CONTRACTOR shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between the sexes. However, nothing in this Article shall prohibit separate facilities necessary to comply with the Americans with Disabilities Act (e.g., disabled parking).

36.3 All subcontracts of \$10,000 shall contain the provisions of this Article.

## **ARTICLE 37. TITLE VI ASSURANCES**

During the performance of this Agreement, the CONTRACTOR, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONTRACTOR) agrees as follows:

- 37.1 Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- 37.2 Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the CONTRACT, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- 37.3 Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 37.4 Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate and shall set forth what efforts CONTRACTOR has made to obtain the information.
- 37.5 Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this Contract, the California Department of Transportation shall impose such sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

37.5.1 withholding of payments to CONTRACTOR under the Contract within a reasonable period of time, not to exceed 90 days; and/or

37.5.2 cancellation, termination or suspension of the Contract, in whole or in part.

37.6 Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

## **ARTICLE 38. RECORD OF MATERIALS, SUPPLIES AND LABOR**

Intentionally Omitted.

## **ARTICLE 39. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

CONTRACTOR agrees that in order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, CONTRACTOR's suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR § 635.119) in one or more places where it is readily available to all persons concerned with the project:

### **NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

18 U.S.C. § 1020 reads as follows:

*"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined under this title or imprisoned not more than five years or both."*

#### **ARTICLE 40. CARGO PREFERENCE ACT (CPA)**

CONTRACTOR must comply with the Cargo Preference Act requirements set forth in Exhibit A – LAPM Exhibit 12-G, attached to this Contract.

#### **ARTICLE 41. GRATUITIES**

CONTRACTOR, its employees, agents or representatives shall not offer or give to an officer, official or employee of SBCTA, gifts, entertainment, payments, loans or other gratuities to influence the award of a contract or obtain favorable treatment under a contract.

#### **ARTICLE 42. CONFIDENTIALITY**

See Article 14.

#### **ARTICLE 43. CONVICT LABOR**

In connection with the performance of work under this Contract, CONTRACTOR agrees not to employ any person undergoing sentence of imprisonment at hard labor. This Article does not include convicts who are on parole or probation.

#### **ARTICLE 44. INSPECTION OF SITE**

CONTRACTOR acknowledges that it has investigated and satisfied itself as to the conditions affecting the work including, but not restricted to, those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electricity and roads, and uncertainties of weather, river stages, tides or similar conditions at the site, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the work. CONTRACTOR fully acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by SBCTA, as well as from information presented by the drawings and specifications made a part of this Contract. Any failure by CONTRACTOR to acquaint itself with the available information will not relieve it from responsibility for the interpretations made by CONTRACTOR on the basis of the information made available by SBCTA.

#### **ARTICLE 45. RECYCLED PRODUCTS**

CONTRACTOR shall comply with all the requirements of section 6002 of the Resource Conservation and Recovery Act as amended (42 USC sec. 6962), including but not limited to 40 CFR Part 247 and Executive Order 13101, as applicable. CONTRACTOR agrees to include this Article in all of its subcontracts.

#### **ARTICLE 46. CLEAN WATER REQUIREMENTS**

CONTRACTOR shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq. CONTRACTOR

shall report each violation to SBCTA and understands and agrees that SBCTA will in turn report each violation as required to assure notification to FHWA and appropriate Environmental Protection Agency (EPA) Regional Office. CONTRACTOR shall include this requirement in all subcontracts and further agrees to take such action SBCTA may direct as a means of enforcing such requirements.

#### **ARTICLE 47 BUY AMERICA**

CONTRACTOR must comply with the Buy America requirements set forth in Exhibit A – LAPM Exhibit 12-G, attached to this Contract, and must ensure that all subcontracts for Work on this Project contain a provision requiring compliance with such Buy America requirements. CONTRACTOR shall indemnify SBCTA from any loss, liability and expenses arising out of CONTRACTOR's failure to comply with Buy America requirements.

#### **ARTICLE 48. DRUG FREE WORKPLACE**

CONTRACTOR agrees to comply with the Drug Free Workplace Act of 1990 per Government Code Section 8350 et seq.; the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 8103, et seq.; U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 CFR Part 32; and U.S. OMB regulatory guidance, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 2 CFR Part 182, particularly where the U.S. OMB regulatory guidance supersedes comparable provisions of 49 CFR Part 32.

#### **ARTICLE 49. LAPM EXHIBIT 12-G – REQUIRED FEDERAL-AID CONTRACT LANGUAGE**

CONTRACTOR expressly acknowledges and agrees that the Required Contract Provisions for Federal-Aid Construction Contracts as set forth in LAPM Exhibit 12-G, attached as Exhibit A (which includes FHWA Form - 1273), are expressly incorporated into this Contract by this reference, and further agrees to comply with such provisions in performance under this Contract. CONTRACTOR further agrees to insert LAPM Exhibit 12-G and Form FHWA – 1273 in each subcontract and to require its inclusion in all lower tier subcontracts awarded in connection with this Contract.

#### **ARTICLE 50. SEVERABILITY**

The partial or complete invalidity in whole or in part, of any one or more of the provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.

#### **ARTICLE 51. FORCE MAJEURE**

CONTRACTOR shall not be in default under this Contract in the event that the Work performed by CONTRACTOR is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, natural disasters such as floods, earthquakes, landslides and fires, or other catastrophic events which are beyond the reasonable control of CONTRACTOR and which CONTRACTOR could not reasonably be

expected to have prevented or controlled. "Other catastrophic events" does not include the financial inability of the CONTRACTOR to perform or failure of the CONTRACTOR to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the CONTRACTOR.

#### **ARTICLE 52. QUALITY ASSURANCE**

The Quality Assurance will be subject to SBCTA's review and approval.

#### **ARTICLE 53. INCORPORATION OF RECITALS**

The Recitals stated above are true and correct and are hereby incorporated into this Contract.

#### **ARTICLE 54. EFFECTIVE DATE**

The date that this Contract is executed by SBCTA shall be the Effective Date of this Contract.

----- SIGNATURES ARE ON THE FOLLOWING PAGE -----

**IN WITNESS WHEREOF**, the Parties hereto have executed this Contract below.

**CONTRACTOR**

**SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Name  
Title

By: \_\_\_\_\_  
Rick Denison  
President, Board of Directors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Licensed in accordance with an act  
providing for registration of contractors.

\_\_\_\_\_  
License Number

**APPROVED AS TO FORM**

\_\_\_\_\_  
Federal Employer  
Identification Number

By: \_\_\_\_\_  
Julianna K. Tillquist  
General Counsel

**CONCURRENCE**

By: \_\_\_\_\_  
Alicia J. Bullock  
Procurement Manager

**EXHIBIT A**  
**LAPM EXHIBIT 12-G REQUIRED**  
**FEDERAL-AID CONTRACT LANGUAGE**  
**(ATTACH FILE)**



# **EXHIBIT B**

## **PREVAILING WAGE RATES**

# **BOND FORMS**

# SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY

Contract No. 24-1003062

## PAYMENT BOND FORM

### KNOW ALL MEN BY THESE PRESENTS:

That the San Bernardino County Transportation Authority of the State of California (hereinafter referred to as SBCTA) and \_\_\_\_\_ (hereinafter referred to as Principal) have by written agreement dated, \_\_\_\_\_, entered into a contract identified as:

CONTRACT No.: 24-1003062 (hereinafter referred to as the Contract); and

That, pursuant to law and said Contract, and before entering upon the performance of said Contract, the principal is required to file with SBCTA a good and sufficient bond to secure the payment of labor and materials claims.

**NOW, THEREFORE**, said Principal and \_\_\_\_\_ insert \_\_\_\_\_ as corporate surety (hereinafter referred to as Surety), (Surety shall be listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California published by the Department of Insurance, State of California or successor publications), are held firmly bound unto SBCTA as obligee, and the state of California, acting through its Department of Transportation (Caltrans) as additional obligee, in the amount of \$ enter amount (\$ enter amount) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally.

**THE CONDITION OF THIS OBLIGATION IS SUCH** that if said principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named or referred to in section 3181 of the California Civil Code, or amounts due under Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the CONTRACTOR and his subcontractors pursuant to section 13020 of the Unemployment Insurance Code with respect to such work and labor as required by Division 3, Part 4, Title XV, Chapter 7 (commencing at section 3247) of the California Civil Code, or this bond, then said Surety will pay for the same, in an amount not to exceed the amount hereinafter set forth.

This bond shall inure to the benefit of any and all persons, companies and corporations named or referred to in section 3181 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that all alterations, extensions of time, extra and additional work, and other changes authorized by the Specifications or any part of the contract may be made without securing consent of the Surety on this bond, and any such actions shall not in any way affect the obligations of the Surety on this bond. Surety does hereby waive notice of any alterations, extensions of time, extra and additional work to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by SBCTA and/or Caltrans and judgment is recovered, Surety shall pay all costs incurred by SBCTA and/or Caltrans in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

	Principal: _____
Dated _____	_____ Signature of Principal
	_____ Surety
	_____ Address
	_____ City, State and Zip
Dated _____	_____ Signature of Surety

NOTE: Signatures of those executing for Surety MUST be properly acknowledged.

NOTE: This form may be reproduced for transmittal to the Surety for execution.

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**Contract No. 24-1003062**

**PERFORMANCE BOND FORM**

**KNOW ALL MEN BY THESE PRESENTS:**

That the San Bernardino County Transportation Authority of the State of California (hereinafter referred to as SBCTA) and \_\_\_\_\_ (hereinafter referred to as Principal) have by written agreement dated \_\_\_\_\_, entered into a contract identified as:

CONTRACT NO. 24-1003062

(Hereinafter referred to as the Contract); and that, the Principal is required under the terms and conditions of said Contract to furnish a bond for the faithful performance of Contract.

**NOW, THEREFORE**, said Principal and \_\_\_\_\_ as corporate surety (hereinafter referred to as Surety), (Surety shall be listed in the Insurance Organizations Authorized by the Insurance Commission to Transact Business of Insurance in the State of California published by the Department of Insurance, State of California or successor publications), are held firmly bound unto SBCTA as obligee, and the State of California, acting through its Department of Transportation (Caltrans) as additional obligee, in the amount of \$ \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally.

**THE CONDITION OF THIS OBLIGATION IS SUCH** that if the said principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall perform all of the covenants, conditions and agreements in said Contract and any alteration made as herein provided, in his/her or their part, to be kept and performed at the time, and in the manner therein specified, and shall indemnify and save harmless, SBCTA and Caltrans their officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force, virtue and effect.

And the said Surety, for value received, hereby stipulates and agrees that all alterations, extensions of time, extra and additional work, and other changes authorized by the Specifications or any part of the contract may be made without securing consent of the Surety on this bond, and any such actions shall not in any way affect the obligations of the Surety on this bond. Surety does hereby waive notice of any alterations, extensions of time, extra and additional work to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by SBCTA and/or Caltrans and judgment is recovered, Surety shall pay costs incurred by SBCTA and/or Caltrans in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

Principal: \_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Surety

Dated \_\_\_\_\_

---

Address

---

City, State and Zip

---

Signature of Surety

NOTE: Signatures of those executing for Surety MUST be properly acknowledged.

NOTE: This form may be reproduced for transmittal to the Surety for execution.

## **ATTACHMENT B DBE FORMS**

### **ATTACHMENT B DBE SOLICITATION LANGUAGE FOR IFBs**

#### **A. SBCTA'S RESPONSIBILITY**

It is San Bernardino County Transportation Authority's (SBCTA) policy to provide disadvantaged, minority, and women-owned business enterprises, as defined in Title 49 CFR Part 26, an equitable opportunity to participate in all contracting opportunities. SBCTA's agreements with Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) regarding its DBE programs, which include minority and women-owned business enterprises, are designed to administer contracts, Contractor selection, and all related procurement activities without regard to race, color, religion, disability, political beliefs, age, national origin, gender, veteran status, or cultural background. Accordingly, no firm or individual shall be denied the opportunity to compete for SBCTA contracts by reasons so stated or implied.

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Caltrans and SBCTA have adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs".

This DOT-assisted project is subject to these stipulated regulations. In order to ensure that SBCTA achieves its overall DBE Program goals and objectives, SBCTA encourages the participation of small businesses, including DBEs as defined in 49 CFR Part 26, in the performance of contracts financed in whole or in part with U.S. DOT funds. In addition, this project is subject to Caltrans' Disadvantaged Business Enterprise (DBE) Program requirements.

In the event of any conflicts or inconsistencies between the CFR and SBCTA's DBE Program with respect to DOT-assisted contracts, the CFR shall prevail.

## **B. DBE GOAL**

SBCTA has established a goal for the participation by DBEs of **22%** of the total Contract value, including any change orders. If the awarded firm has a total DBE commitment (15-G) in excess of the DBE goal, the firm will be held to the higher commitment amount.

Only DBEs who meet the definition contained within these provisions and who have been certified under the California Unified Certification Program (CUCP) at the time of Bid opening may be credited toward the goal.

**If the DBE goal is not met, the firm must demonstrate that adequate good faith efforts were made to meet the goal and to be required to submit Form 15-H, "DBE Information-Good Faith Efforts".**

Specific instructions and copies of required forms are included in this Attachment.

## **C. DEFINITIONS**

The following definitions apply to the terms as used in these provisions:

1. **"Disadvantaged Business Enterprise (DBE)"** means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (c) a certified DBE owned by one (1) of the following six (6) groups: African American, Asian-Pacific American, Hispanic



American, Subcontinent Asian American, Native American and Women owned businesses, which were identified by the Federal Highway Administration (FHWA).

3. **"Small Business Concern"** means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).
4. **"Socially and Economically Disadvantaged Individual"** means any individuals who is a citizen of the United States (or lawfully admitted permanent resident) and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
  - (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group.
  - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
    - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
    - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
    - (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
    - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
    - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
    - (vi) Women;
    - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, and at such time as the SBA designation becomes effective
5. **"Manufacturer"** means 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 specifications.
6. **"Regular Dealer"** means 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. The firm must engage in, as its principal business and in its own name, the purchase and sale or lease of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone, asphalt and petroleum products need not own, operate or maintain a place of business as provided in this

paragraph if it both owns and operates distribution equipment for the products. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.

#### **D. DBE BID SUBMISSION REQUIREMENTS**

1. The following forms must be submitted no later than the close of business five (5) calendar days after Bid submittal

- a. **“Bidders List of Subcontractors (DBE and Non DBE)” -Exhibit 12-B**

The U.S. Department of Transportation (DOT) requires SBCTA to maintain a “Bidders List” containing information about all firms (DBE and non-DBE) that bid, propose or quote on SBCTA's DOT-assisted contracts, in accordance with 49 CFR Part 26.11. Therefore, the bidder shall provide the requested information for every firm who submitted a bid, proposal or quote, including the primary bidder, whether successful or unsuccessful in their attempt to obtain a contract:

- 1) Firm name;
- 2) Firm address;
- 3) Phone number;
- 4) A description of the work that each DBE will perform;
- 5) Firm's status as a DBE or non-DBE;
- 6) Annual gross receipts for the last year.

The “Bidders List of Subcontractors (DBE and Non DBE)” information must be submitted on Exhibit 12-B and submitted with the bid.

- b. **Local Agency Bidder DBE Commitment (Exhibit 15-G)**

If the bidder is a DBE or intends to utilize DBE subcontractors and/or purchase goods or services from DBE vendors or DBE suppliers in the performance of this contract, the bidder shall provide the following information for every DBE firm who will be proposed and/or listed to participate to facilitate capturing DBE participation under this contract:

- 1) The complete name and address of each DBE who will participate in the contract;
- 2) A description of the work that each DBE will perform or provide;
- 3) The dollar amount of the work to be performed or provided by the DBE;
- 4) Valid DBE Certification eligibility status, in conformance with 49 CFR, Part 26.

DBEs listed on Exhibit 15-G and certified in the work areas described will be counted toward the DBE contract goal.

- c. **Good Faith Efforts (Exhibit 15-H)**

SBCTA has established a Disadvantaged Business Enterprise (DBE) goal for this project. All bidders shall submit **Exhibit 15-H** to document adequate good faith efforts. Bidders should submit **Exhibit 15-H** even if the “Local Agency Bidder – DBE Commitment” form (15-G) indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for

award of the contract if SBCTA or Caltrans determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, the DBE was not certified in the work area listed or the bidder made a mathematical error.

Contractors must submit Good Faith Efforts information on Exhibit 15-H and include supporting documentation no later than 4:00 p.m. five (5) calendar days after bid opening. Good Faith Efforts should be submitted electronically to [jholliday@gosbcta.com](mailto:jholliday@gosbcta.com).

3. The prime contractor must complete the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments and email it to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) and SBCTA after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month. Submission of this Exhibit is required until all DBE subcontracting or material supply activity on the entire project is completed.
4. The following form must be submitted at the conclusion of the project:
  - a. Final Report- Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors (Exhibit 17-F)

Upon completion of the Contract, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors," (Exhibit 17-F), certified correct by the Contractor or the Contractor's authorized representative and shall be furnished to the Project Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in 10% of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Project Manager.

5. The following must be submitted, if applicable:

- a. Disadvantaged Business Enterprises (DBE) Certification Status Change (Exhibit 17-O)

If a DBE subcontractor is decertified during the life of the Contract, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the Contract, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to SBCTA's Project Manager within 30 days.

- b. Notification of Disadvantaged Business Enterprises (DBE) Substitution

CONTRACTOR must have prior approval from SBCTA of any DBE subcontractor terminations and substitutions. Contractor must give notice in writing to the DBE subcontractor, with a copy to SBCTA, of its intent to request to terminate and/or substitute, and the reason for the request. Contractor must give the DBE five (5) days to respond to the notice and advise SBCTA and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract. If a listed DBE subcontractor is terminated, you must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under

the Agreement to the extent needed to meet the DBE goal. The substitute DBE must be certified as a DBE at the time of request for substitution. SBCTA does not pay for work or material unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section and California Civil Code 4107.

## E. DBE CERTIFICATION

SBCTA is participating as a Non-Certifying Member in the California Unified Certification Program (CUCP). SBCTA requires all DBEs listed by bidder for participation to be certified as eligible DBEs at the time of bid submission. Only participation by DBEs certified by the CUCP under the DOT regulations published under 49 CFR Part 26 may be credited towards race-neutral or race-conscious DBE participation. It is the responsibility of the bidder to verify the DBE certification status of all listed DBEs.

## F. DBE ELIGIBILITY AND COMMERCIALLY USEFUL FUNCTION STANDARDS

1. A DBE must be a small business concern as defined pursuant to section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
2. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company, or on a case-by-case basis joint venture partner with a prime or subcontractor.
3. 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.
4. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., 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). A DBE should perform at least **thirty percent (30%)** of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.
5. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
  - a. The CUCP web site, which can be accessed at [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).
  - b. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Civil Rights Certification Unit at (916) 324-1700 for assistance.
  - c. In order to identify certified DBEs, you must only use the California Unified Certification Program Database (CUCP). **Certifications from other agencies or organizations will not be accepted.**
    - i. "FRAUDS" and "FRONTS" - Bidders are hereby cautioned against knowingly and willfully using "fronts" or doing business with DBEs in a manner which could

compromise the DBE's continued eligibility and to meet the DBE goal of this contract. Only legitimate DBEs are eligible to participate in any federally funded contract. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Any indication of fraud, waste, abuse or mismanagement of federal funds should be immediately reported to SBCTA or to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline (800-424-9071), or to the following field office: FTA Special Agent-in-Charge, 201 Mission Street, Suite 1650, San Francisco, CA 94105, (415-774-2729).

## **G. DBE CREDITING PROVISIONS**

1. When a DBE is proposed to participate in the contract, either as a prime contractor or subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards DBE participation. On a case-by-case basis SBCTA may allow a joint venture; in the case where a joint venture is allowed, if the contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.
2. If a DBE intends to subcontract part of the work of its subcontract to a lower tier subcontractor, the value of the subcontracted work may be counted toward DBE participation only if the DBE subcontractor is a certified DBE and actually performs the work with his or her own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's DBE attainment.
3. Materials or supplies purchased from DBEs count toward DBE credit, and if a DBE is also a DBE, purchases will count toward the DBE goal under the following conditions:
  - a. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies counts towards the goal. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises that materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
  - b. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies.
  - c. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution 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 charged for assistance in the procurement of the materials and supplies required or fees or transportation charges for the delivery of materials or supplies on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
4. For DBE trucking companies: credit for DBEs will count towards DBE credit, under the

following conditions:

- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the agreement.
- c. The DBE receives credit for the total value of the transportation services it provides on the agreement using trucks it owns, insures, and operates using drivers it employs.
- d. The DBE may lease trucks from another DBE firm including an owner-operator who is certified as a DBE. A DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- e. The DBE may lease trucks from another DBE firm including an owner-operator. A DBE who leases trucks with drivers from a non-DBE is entitled to credit only for the fee it receives as a result of the lease arrangement. A DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- f. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

## **H. GOOD FAITH EFFORTS**

If the bidder fails to meet the established contract-specific DBE goal, the bidder must document Good Faith Efforts to be deemed responsive to the DBE requirements set forth in this solicitation. This means that the bidder must demonstrate that it took all necessary and reasonable steps to achieve the DBE goal that could reasonably be expected to obtain sufficient DBE participation, even if the bidder was not fully successful. The efforts employed by the bidder should be consistent with actively and aggressively trying to obtain DBE participation sufficient to meet the established DBE contract goal. Mere pro forma efforts are not Good Faith Efforts to meet the DBE contract requirements. SBCTA will make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good efforts to do so.

All bidders shall submit all Good Faith Efforts documentation (undertaken prior to bidding) to SBCTA within five (5) calendar days after Bid opening. The Contractor shall not begin performance of work prior to submitting Good Faith Effort documentation.

Good Faith Efforts must be documented on Exhibit 15-H. The following types of actions and documentation are necessary to evidence such efforts:

1. Identifying efforts made to reasonably structure the contract scope of work for purposes of subcontracting with DBEs. Include documentation showing the portion of the scopes of work DBEs will be solicited to bid/propose and the associated dollar value of each item. Bidder should also identify the scope of work that the Bidder intends to perform with its own workforce.
2. Timely place advertisement(s) in one general circulation, one trade association publication and at least one disadvantaged/minority and women business focus medium. The advertisements must include, at a minimum, identification of specific subcontracting opportunities being solicited, project name, location, DBE goal, identification of SBCTA as Owner, bidder's contact person including name, address, phone, fax, bid/proposal solicitation due date, and statement that bidder intends to conduct itself in good faith with DBE firms for participation on the project. Advertisements should appear at least 15 calendar days prior to Bid submittal due date to be considered timely.
3. Provision of extending written notices to DBEs to solicit interest in all of the identified subcontracting areas toward promoting participation. There should be a sufficient number of written invitations to DBE firms for each subcontracting area identified.

Notices should be issued at least 15 calendar days prior to submittal due date to allow sufficient time for the DBEs to respond to the solicitation.

Subsequent efforts to follow-up on initial solicitations to DBEs, including contract requirements, plans and specifications timely provided to DBEs for purposes of soliciting their bids. Documentation should include:

- a. Names, addresses and telephone numbers of DBEs contacted by each subcontracting area identified/solicited;
  - b. Description of information timely provided to interested DBEs about the contract requirements, plans and specifications to assist DBEs in responding to the solicitation; and the dates and manner in which these documents were made available;
  - c. Statement of justification re: unsuccessful solicitation of DBEs; and
  - d. Negotiating in good faith with interested DBEs, to facilitate DBE participation. Utilization of a sound basis of selection and/or rejection of DBEs bids.
4. A bidder using good business judgment must consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and must take a firm's price and capabilities, as well as, the contract goal into consideration. The fact that there may be some additional costs involved in using DBEs is not, in itself, sufficient reason for a bidder's failure to meet established contract DBE goal. Also, the ability or desire of the prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts toward meeting the objectives of DBE goal. Evidence of a willingness to modify planned prime contractor scope or subcontract packaging to facilitate DBE participation will demonstrate serious effort.

5. Barring lack of qualifications to perform work, only significant price differences (the relevant Federal regulations reference 10% or more as significant) between the selected firm and rejected DBE firms' proposed costs would be considered as valid cause for rejecting bids. Additionally, union vs. non-union employee status is not a legitimate cause for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.
6. Documentation of such negotiation shall include the names, addresses, and telephone numbers of all subcontractors (DBEs and non-DBEs) that submitted a bid, including copies of all bids received for each portion of work solicited, and stated reasons for bidder's choice of the selected and/or rejected subcontractor bid. Include in the negotiation document the reasons why additional agreements could not be reached with a DBE to perform the work.
7. In determining whether a bidder has made Good Faith Efforts, SBCTA will take into account the performance of other bidders in meeting the established contract-specific DBE goal requirements. The individual bidder's effort/commitment in meeting the established contract DBE goal will be evaluated against the average DBE participation commitments by the three (3) low responsive bidders. If there are fewer than three (3) responsive bidders, the average of two (2) bidders' goal commitments will be considered.
8. Provide offer of assistance to interested DBEs in obtaining bonding, lines of credit, and/or insurance required by the Contractor. Provide a description of assistance extended and made available by bidder to interested DBEs in obtaining bonding, lines of credit and/or insurance. At minimum, bidder must provide evidence of the availability of assistance by providing copies of subcontracting advertisements and DBE solicitation letters.
9. Utilization of outreach services available within the DBE community, including contractor groups, local, state and federal DBE offices and other organizations that provide assistance in the recruitment and placement of DBEs. Notices to community outreach services should be issued at least 15 calendar days prior to submittal due date. Copies of letters, faxes, telephone logs, etc., used to contact organizations, which include the names of organizations/groups, dates, names of contacts, and telephone numbers, and copies of correspondence received from these entities acknowledging contact. The bidder must document outreach to a minimum of five (5) organizations/groups.
10. Only those efforts made prior to bid submittal due date will be considered in evaluating Good Faith Efforts. Failure to submit the required Good Faith Effort documentation within five (5) calendar days after bid opening will be grounds for finding the bid non-responsive.

For additional assistance with Good Faith Efforts, please refer to SBCTA's website:  
<http://www.gosbcta.com>.

## I. BID RIGGING

The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (900) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.





**ATTACHMENT C**  
**CALTRANS APPENDIX E OF THE TITLE VI ASSURANCES**

## **ATTACHMENT C**

### **CALTRANS APPENDIX E OF THE TITLE VI ASSURANCES**

During the performance of this contract, the CONTRACTOR, for itself, its assignees, and successors in interest (hereinafter referred to as the “CONTRACTOR”) agrees to comply with the following nondiscrimination statutes and authorities, including but not limited to:

#### **Pertinent Nondiscrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.) (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), as amended (prohibits discrimination on the basis of disability) and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 U.S.C. § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, subrecipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- 
- ;
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

# **INSTRUCTIONS-EXHIBIT 12-B BIDDER'S LIST OF SUBCONTRACTORS (DBE AND NON-DBE) PART I AND PART II (CONSTRUCTION CONTRACTS)**

## **ALL BIDDERS:**

The U.S. Department of Transportation (DOT) requires SBCTA to maintain a "Bidders List" containing information about all firms (DBE and non-DBE) that bid, propose or quote on SBCTA's DOT-assisted contracts, in accordance with 49 CFR Part 26.11, for use in SBCTA's overall annual DBE goal-setting process. Therefore, the bidder shall provide the requested information for every firm who submitted a quote, bid, or proposal, including the primary bidder whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name;
- b. Firm address;
- c. Phone number
- d. A description of the work that each DBE will perform;
- e. Firm's status as a DBE or non-DBE;
- f. Age of the firm;
- g. Annual gross receipts

**PART I** - Identifies all subcontractors (DBE and Non-DBE) that provided a quote, bid, or proposal.

**PART II** - Identifies all subcontractors (DBE and Non-DBE) that provided a quote, bid, or proposal but were not selected to participate as a subcontractor on the project.

It is the bidder's responsibility to verify that the DBE(s) falls into one of the following groups in order to count towards the DBE contract goal: 1) Black American; 2) Asian-Pacific American; 3) Hispanic Americans; 4) Subcontinent Asian American; 5) Native American; and 6) Women.

**Exhibit 12-B: Bidder's List of Subcontractor (DBE and Non-DBE) - Part 1**

As of March 1, 2015 Contractors (and sub-contractors) wishing to bid on public works contracts must be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>. The local agency will verify registration of all contractors and subcontractors on public works projects at bid and thereafter annually to assure that yearly registration is maintained throughout the life of the project.

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater).

Photocopy this form for additional firms.

FEDERAL PROJECT NUMBER: \_\_\_\_\_

Subcontractor Name & Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Subcontracted	Contractor License Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
				DIR Reg Number			
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years

Distribution – Original: Local Agency File; Copy: DLAE w/Award Package

**Exhibit 12-B: Bidder's List of Subcontractor (DBE and Non-DBE) - Part 2**

In accordance with Title 49, Section 26 of the Code of Federal Regulations, the Bidder shall list all subcontractors who provided a quote or bid but **were not selected** to participate as a subcontractor on this project.

Photocopy this form for additional firms.

FEDERAL PROJECT NUMBER: \_\_\_\_\_

Subcontractor Name & Location	Line Item & Description	Subcontract Amount	Percentage of Bid Item Subcontracted	Contractor License Number	DBE (Y/N)	DBE Cert Number	Annual Gross Receipts
				DIR Reg Number			
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years
NAME							< \$1 million
							< \$5 million
City, State							< \$10 million
							< \$15 million
							Age of Firm in years

Distribution – Original: Local Agency File; Copy: DLAE w/Award Package

## INSTRUCTIONS-EXHIBIT 15-G

### LOCAL AGENCY BIDDER DBE INFORMATION (Revised 03/09)

## (CONSTRUCTION CONTRACTS)

### **ALL BIDDERS:**

It is the bidder's responsibility to verify that the DBE(s) falls into one of the following groups in order to count towards the DBE contract goal: 1) Black American; 2) Asian-Pacific American; 3) Hispanic Americans; 4) Subcontinent Asian American; 5) Native American; 6) Women. This information must be submitted with your bid. **Failure to submit the required DBE commitment will be grounds for finding the bid nonresponsive.**

### **SUCCESSFUL BIDDER:**

The form included in this IFB as 15-G requires specific information regarding the construction contract: Local Agency (SBCTA), location, project description, total contract amount, bidder's name and contract DBE goal.

Form 15G has a column for the Contract Item Number and Item of Work and Description of Services to be Subcontracted or Materials to be provided by DBEs. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own forces, if a DBE. The DBE shall provide a certification number to the Contractor and expiration date. Enter the DBE prime and subcontractor's certification number. The DBE contractors shall notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (must be certified on the date bids are opened) and include DBE address and phone number.

**IMPORTANT:** Bidders are to identify **all** DBE firms participating in the project, including all DBEs listed on the DBE Commitment Form (15-G), regardless of tier. Names of the First-Tier DBE subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your Bid. Provide copies of the DBEs' quotes, and if applicable, a copy of the joint venture agreements pursuant to the Subcontractors Listing Laws and the Special Provisions.

There is a column for the DBE participation dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to the Special Provision included in this IFB. (If 100% of item is not to be performed or furnished by the DBE, describe the exact portion of time to be performed or furnished by the DBE.) See section "Disadvantaged Business Enterprise (DBE)," of the Special Provisions to determine how to count the participation of DBE firms.

Exhibit 15G must be signed and dated by the successful bidder. Also list a phone number in the space provided and print the name of the person to contact.

## **INSTRUCTIONS – CONSTRUCTION CONTRACT DBE COMMITMENT**

### **CONTRACTOR SECTION**

1. **Local Agency** - Enter the name of the local agency that is administering the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Project Location** - Enter the project location(s) as it appears on the project advertisement.
5. **Bidder's Name** - Enter the contractor's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Bid Amount** - Enter the total contract bid dollar amount for the prime contractor.
8. **Total Dollar Amount for ALL Subcontractors** – Enter the total dollar amount for all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
9. **Total number of ALL subcontractors** – Enter the total number of all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
10. **Bid Item Number** - Enter bid item number for work, services, or materials supplied to be provided.
11. **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 contractor'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.
12. **NAICS or Work Category Codes** - Enter NAICS or Work Category Codes from the California Unified Certification Program database.
13. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
14. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors. Also, enter the prime contractor's name and phone number, if the prime is a DBE.
15. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime contractor if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
16. **Total Claimed DBE Participation** - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Claimed DBE Participation Dollars" divided by item "Bid Amount"). 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).
17. **Preparer's Signature** - The person completing the DBE commitment form on behalf of the contractor's firm must sign their name.
18. **Date** - Enter the date the DBE commitment form is signed by the contractor's preparer.
19. **Preparer's Name** - Enter the name of the person preparing and signing the contractor's DBE commitment form.
20. **Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.
21. **Preparer's Title** - Enter the position/title of the person signing the contractor's DBE commitment form.

## LOCAL AGENCY SECTION



22. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
23. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number(s).
24. **Bid Opening Date** - Enter the date contract bids were opened.
25. **Contract Award Date** - Enter the date the contract was executed.
26. **Award Amount** – Enter the contract award amount as stated in the executed contract.
27. **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 Contractor Section of this form is complete and accurate.
28. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
29. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the contractor's DBE commitment form.
30. **Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.
31. **Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the contractor's DBE commitment form.

## Exhibit 15-G: Construction Contract DBE Commitment

1. Local Agency: _____	2. Contract DBE Goal: _____
3. Project Description: _____	
4. Project Location: _____	
5. Bidder's Name: _____	6. Prime Certified DBE: <input type="checkbox"/> 7. Bid Amount: _____
8. Total Dollar Amount for <b>ALL</b> Subcontractors: _____ 9. Total Number of <b>ALL</b> Subcontractors: _____	

10. Bid Item Number	11. Description of Work, Service, or Materials Supplied	12. NAICS or Work Category Codes	13. DBE Certification Number	14. DBE Contact Information (Must be certified on the date bids are opened)	15. DBE Dollar Amount

<b>Local Agency to Complete this Section upon Execution of Award</b>		<b>16. TOTAL CLAIMED DBE PARTICIPATION</b>	
22. Local Agency Contract Number: _____		<div style="display: flex; justify-content: space-between;"> <span>\$ _____</span> <span>% _____</span> </div>	
23. Federal-Aid Project Number: _____			
24. Bid Opening Date: _____			
25. Contract Award Date: _____			
26. Award Amount: _____		<b>IMPORTANT:</b> Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required.	
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
27. Local Agency Representative's Signature _____	28. Date _____	17. Preparer's Signature _____	18. Date _____
29. Local Agency Representative's Name _____	30. Phone _____	19. Preparer's Name _____	20. Phone _____
31. Local Agency Representative's Title _____		21. Preparer's Title _____	

**DISTRIBUTION:** 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.  
 3. Include additional copy with award package.

## DBE INFORMATION – EXHIBIT 15-H GOOD FAITH EFFORTS

Federal-aid Project No. \_\_\_\_\_ Bid Opening Date: \_\_\_\_\_

SBCTA has established a Disadvantaged Business Enterprise (DBE) goal of **22 %** for this project. The information provided herein shows that a good faith effort was made.

All bidders shall submit the following information to document adequate good faith efforts within five (5) calendar days from bid opening. Bidders should submit the following information even if the "Local Agency Bidder – DBE Commitment" form (15-G) indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following types of actions will be considered as part of the bidder's Good Faith Efforts to obtain DBE participation:

- a. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder. Attach copies of advertisements or proofs of publication:

Publications	Dates of Advertisement

- b. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested. Attach copies of solicitations, telephone records, fax confirmations etc.

Names of DBEs	Date of Initial Solicitation	Follow-Up Methods & Dates

- c. The items of work which the bidder made available to DBE firms, including, where appropriate, any break down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage of Contract

- d. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE.

1. Names, addresses and phone numbers of rejected DBEs and the reasons for the Bidder's rejection of the DBEs:


2. Names, addresses and phone numbers of firms selected for the work identified above:


- e. Efforts made to assist interested DBEs in obtaining information related to the plans, specifications, and requirements for the work which was provided to DBEs:


- f. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, if necessary, equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate::


- g. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms. Attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.

Names of Agency/Organization	Method/Date of Contact	Results

- h. Any additional data to support a demonstration of good faith efforts please include here.


- i. Bidders are advised to attach all requested documents to this form. Include any and all supplemental materials necessary in order to demonstrate Good Faith Efforts.

## **EXHIBIT 9-I**

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

**DLA DBE CONFIRMATION**

DOT LAPM 9-I (NEW 01/2023)

FEDERAL PROJECT NUMBER

NAME OF DBE BUSINESS

NAME OF DBE REPRESENTATIVE

DBE CERTIFICATION NUMBER

NAME OF BIDDER

NAME OF PRIME CONTRACTOR IF DIFFERENT FROM THE BIDDER

NAME OF REPRESENTATIVE OF PRIME CONTRACTOR

DATE \_\_\_\_\_

[illegible]

<sup>1</sup> If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

DBE firms can use this form as a written confirmation or use an equivalent form. Written confirmation must be submitted no later than 4 pm on the 5<sup>th</sup> day of bid opening.

Total

As an authorized representative of a certified disadvantaged business enterprise, I confirm if the bidder is awarded the contract, my business will enter into a contractual agreement with the bidder or prime contractor to perform the type and dollar amount of work shown on the DBE Commitment form.

I certify under penalty of perjury that the foregoing is true and correct.

**TESTING NOTE**

Signature of DBE's Authorized Representative

Printed Name of DBE's Authorized Representative

Title of DBE's Authorized Representative

Date \_\_\_\_\_

**Americans with Disabilities Act (ADA) Notice:** This document is available in alternative accessible formats. For more information, please contact the Forms Management Unit at (279) 234-2284, TTY 711, in writing at Forms Management Unit, 1120 N Street, MS-89, Sacramento, CA 95814, or by email at [Forms.Management.Unit@dot.ca.gov](mailto:Forms.Management.Unit@dot.ca.gov).

**INSTRUCTIONS – CALTRANS EXHIBIT 9-F INSTRUCTIONS**  
**SUCCESSFUL BIDDER:**

## Exhibit 9-F Instructions

### I. Purpose:

Title 49 of the Code of Federal Regulations (CFR), Part 26.37(c) requires recipients of federal-aid funding to "provide a running tally of actual attainments, including a means of comparing these attainments to commitments." This requirement does not apply to projects that do not have any federal funding.

### II. Policy:

- A. To comply with 49 CFR 26.37(c), the prime contractors/consultants must complete the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments and email it to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) and their local administering agencies after submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month. Submission of this Exhibit is required until all DBE subcontracting or material supply activity on the entire project is completed.
- B. Save this form using the following naming convention, [yyyymm]-[Prime's DUNS Number]-[ss].xlsx. [ss] is two digit sequential numbering, applicable when consultant or contractor has more than one 9-F form to complete per pay period. For example, a valid saved file could read: 202001-123456789-01.xlsx

### III. Instructions:

- (1) **Reporting Period (mm-yyyy):** Indicate the month and year of payments being reported.
  - (2) **Federal Aid Project Number:** Enter the 7 digit federal-aid project number of the lead project on the contract. E.g. 5002(123) is a valid Federal-Aid Project Number.
  - (3) **Caltrans District:** Enter the appropriate Caltrans District number as 1 through 12.
  - (4) **Local Agency:** List the local agency's name.
  - (5) **Contract Number:** List the local agency assigned contract agreement number.
  - (6) **Total Contract Award Amount (\$):** Enter the total current contract award amount of the project.
  - (7) **DBE Goal Percentage (%):** Enter the contract DBE goal percentage as it appears on the project advertisement.
  - (8) **DBE Committed Percentage (%):** Enter percentage of the Prime contract committed to DBE firms.
  - (9) **Prime Contractor/Consultant DUNS Number:** Enter the unique nine-digit Data Universal Numbering System (DUNS) that Contractors/Consultants should have in order to participate in Federally-funded contracts.
  - (10) **Business Name:** List the name for the prime contractor/consultant as identified in Procedure 9 above.
  - (11) **Amount Prime's Invoice This Period (\$):** Enter the total invoice amount that prime submitted for reimbursement this period.
  - (12) **Amount Paid to Prime To Date (\$):** Enter the total payment that is paid to the Prime to date.
  - (13) **Prime certified DBE:** Enter "Yes" if Prime Contractor/Consultant is certified DBE and "No" otherwise.  
DBE Prime contractor needs to fill in from procedure (14) to (21) for payments to DBE Subcontractors and DBE Prime's self-performing.
- Note:** For Procedures (14) through (21) below, insert rows as needed to list all DBEs included on Exhibits 10-02 or 15-G, and any other DBEs that were utilized regardless of tier.
- (14) **DBE Firm name:** List the DBE's firm name.
  - (15) **DBE Cert. Number:** List the DBE's certification number as listed in the California Unified Certification Program (CUCP) database.
  - (16) **Contract Type:** Select the most appropriate Subcontractor's contract type (Agent, Consultant, Joint Venture, Manufacturer, Prime, Regular Dealer, Subcontractor, Truck/Haul, Service Provider from dropdown list.)
  - (17) **Date of Payment:** List current check date when a check is issued to the DBE for work performed by the DBE.
  - (18) **Amount of This Payment:** List the total amount paid to the DBE this period.
  - (19) **Amount Paid to Date:** List the total amount paid to this DBE to date. This should be a total of past payments plus payment for the current work just invoiced to the Local Agency.
  - (20) **Amount Committed to This DBE Firm:** Copy the information from the agency signed Exhibit 10-02 or 15-G. If the listed DBE was not originally committed to, type "0."
  - (21) **Comments:** Add appropriate notes if a DBE subcontract was terminated, a DBE subcontract was added, if change orders impacted the DBE's payments (include good faith efforts the prime contractor/consultant implemented), if task orders weren't issued, etc.
  - (22) **Prime Contractor/Consultant Manager's Name:** Enter the manager's name of the prime contractor/consultant of the project.
  - (23) **Business Phone Number:** Enter the manager's business phone number of the prime contractor/consultant.
  - (24) **Date:** Provide the date this form was prepared.
  - (25) **Copy Distribution:** The prime contractor/consultant will need to maintain a copy with the contract file (electronic and/or paper). The prime contractor/consultant will need to e-mail this form as provided in the Section II. Policy, paragraphs A as stated above. Local agency will need to keep a copy with the contract file.

## EXHIBIT 9-F: DISADVANTAGED BUSINESS ENTERPRISE (DBE) RUNNING TALLY OF PAYMENTS

Save this form using the following naming convention, [yyyy-mm]-[Prime's DUNS Number]-[ss].xlsx. [ss] is two digit sequential numbering, applicable when consultant or contractor has more than one 9-F form to complete per pay period. For example, a valid saved file could read: 202001-123456789-01.xlsx. Prime contractors/consultants are required to submit this form no later than the 10<sup>th</sup> of the following month, after submitting an invoice for reimbursement that includes a payment to a DBE. If no payments have been made, do not submit the form. Email this form to [Business.Support.Unit@dot.ca.gov](mailto:Business.Support.Unit@dot.ca.gov) with a copy to their local administering agencies. Do not submit this form with the invoice, it will not be processed.

(1) Reporting Period (mm-yyyy)		(2) Federal Aid Project Number		(3) Caltrans District		(4) Local Agency	
(5) Contract Number		(6) Total Contract Award Amount (\$)		(7) DBE Goal Percentage (%)		(8) DBE Committed Percentage (%)	
(9) Prime Contractor/Consultant DUNS Number		(10) Business Name		(11) Amount Prime Invoiced This Period (\$)		(12) Amount Paid to Prime To Date (\$)	
						(13) Prime Certified DBE?	
(14) DBE Subcontractor Name	(15) DBE Cert. Number	(16) Contract Type	(17) Date of Payment	(18) Amount of This Payment	(19) Amount Paid To Date	(20) Amount Committed To This DBE	(21) Comments
			Totals	\$0	\$0	\$0	

List all DBEs regardless of tier, whether or not the firms were originally listed in Exhibit 10-O2 or 15-G as a DBE commitment. If the actual DBE utilization was different than that approved at the time of award, provide comments in box (21). All payments reported, including payments to contractor/consultant, are for the date listed. Select the most appropriate contract type (Agent, Consultant, Joint Venture, Manufacturer, Prime, Regular Dealer, Subcontractor, Truck/Haul, Service Provider) for the DBE from dropdown list.

By executing this 9-F, Contractor represents and warrants, under penalty of perjury, that:  
 Contractor contracted with the Disadvantaged Business Enterprise companies (DBEs) as set forth in their awarded bid on Contract number \_\_\_\_\_  
 Contractor paid the full amounts listed on their 9-F to the DBEs set forth in Contractor's awarded bid, without reduction or offset.

(22) Prime Contractor/Consultant Manager's Name (Print)		(23) Business Phone Number	(24) Date

COPY DISTRIBUTION: Original - Prime Contractor/Consultant, Copy - E-mail: [Business.Support.Unit@dot.ca.gov](mailto:Business.Support.Unit@dot.ca.gov); Copy: Local Administering Agency

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**INSTRUCTIONS – FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS (Exhibit 17-F)**

- 1. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 2. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 3. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 4. Contract Completion Date** - Enter the date the contract was completed.
- 5. Contractor/Consultant** - Enter the contractor/consultant's firm name.
- 6. Business Address** - Enter the contractor/consultant's business address.
- 7. Final Contract Amount** - Enter the total final amount for the contract.
- 8. Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
- 9. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/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.
- 10. Company Name and Business Address** - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.
- 12. Contract Payments** - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.
- 13. Date Work Completed** - Enter the date the subcontractor/subconsultant's item work was completed.
- 14. Date of Final Payment** - Enter the date when the prime contractor/consultant made the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.
- 15. Original DBE Commitment Amount** - Enter the "Total Claimed DBE Participation Dollars" from Exhibits 15-G or 10-O2 for the contract.
- 16. Total** - Enter the sum of the "Contract Payments" Non-DBE and DBE columns.
- 17. Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
- 18. Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
- 19. Phone** - Enter the area code and telephone number of the person signing the form.
- 20. Date** - Enter the date the form is signed by the contractor's preparer.
- 21. Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
- 22. Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
- 23. Phone** - Enter the area code and telephone number of the person signing the form.
- 24. Date** - Enter the date the form is signed by the Local Agency Representative.

**Exhibit 17-F Final Report-Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors**

1. Local Agency Contract Number		2. Federal-Aid Project Number		3. Local Agency			4. Contract Completion Date	
5. Contractor/Consultant			6. Business Address				7. Final Contract Amount	
8. Contract Item Number	9. Description of Work, Service, or Materials Supplied	10. Company Name and Business Address	11. DBE Certification Number	12. Contract Payments		13. Date Work Completed	14. Date of Final Payment	
				Non-DBE	DBE			
15. ORIGINAL DBE COMMITMENT AMOUNT \$				16. TOTAL				

List all first-tier subcontractors/subconsultants and DBEs regardless of tier whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at the time of award, provide comments on an additional page. List actual amount paid to each entity. If no subcontractors/subconsultants were used on the contract, indicate on the form.

<b>I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT</b>			
17. Contractor/Consultant Representative's Signature	18. Contractor/Consultant Representative's Name	19. Phone	20. Date
<b>I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED</b>			
21. Local Agency Representative's Signature	22. Local Agency Representative's Name	23. Phone	24. Date

DISTRIBUTION: Original – Local Agency, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

**INSTRUCTIONS - DISADVANTAGED BUSINESS ENTERPRISES (DBE)  
CERTIFICATION STATUS CHANGE 17-O**

- 1. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 2. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 3. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 4. Contract Completion Date** - Enter the date the contract was completed.
- 5. Contractor/Consultant** - Enter the contractor/consultant's firm name.
- 6. Business Address** - Enter the contractor/consultant's business address.
- 7. Final Contract Amount** - Enter the total final amount for the contract.
- 8. Contract Item Number** - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors/consultants.
- 10. DBE Certification Number** - Enter the DBE's Certification Identification Number.
- 11. Amount Paid While Certified** - Enter the actual dollar value of the work performed by those subcontractors/subconsultants during the time period they are certified as a DBE.
- 12. Certification/Decertification Date (Letter Attached)** - Enter either the date of the Decertification Letter sent out by the Office of Business and Economic Opportunity (OBEO) or the date of the Certification Certificate mailed out by OBEO.
- 13. Comments** - If needed, provide any additional information in this section regarding any of the above certification status changes.
- 14. Contractor/Consultant Representative's Signature** - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
- 15. Contractor/Consultant Representative's Name** - Enter the name of the person preparing and signing the form.
- 16. Phone** - Enter the area code and telephone number of the person signing the form.
- 17. Date** - Enter the date the form is signed by the contractor's preparer.
- 18. Local Agency Representative's Signature** - A Local Agency Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
- 19. Local Agency Representative's Name** - Enter the name of the Local Agency Representative signing the form.
- 20. Phone** - Enter the area code and telephone number of the person signing the form.
- 21. Date** - Enter the date the form is signed by the Local Agency Representative.

[illegible]

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT		17. Date
14. Contractor/Consultant Representative's Signature	15. Contractor/Consultant Representative's Name	16. Phone
I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED		
18. Local Agency Representative's Signature	19. Local Agency Representative's Name	20. Phone
		21. Date

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**EXHIBIT 12-G: REQUIRED FEDERAL-AID CONTRACT LANGUAGE**  
(For Local Assistance Construction Projects)

The following language must be incorporated into all Local Assistance Federal-aid construction contracts.  
The following language, with minor edits, was taken from the Code of Federal Regulations.

**MAINTAIN RECORDS AND SUBMIT REPORTS DOCUMENTING YOUR PERFORMANCE UNDER THIS SECTION**

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## 1. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The contractor, subrecipient or subcontractor shall take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the Agency shows a contract goal for DBEs. The prime contractor shall make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

The prime contractor shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate Good Faith Efforts (GFE) to meet this goal. An adequate GFE means that the bidder 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 DBE goal is not met, the contractor needs to complete and submit the DBE GFE documentation as described in Local Assistance Procedures Manual (LAPM) Chapter 9, Section 9.8 within 5 (five) days of bid opening.

It is the prime contractor's responsibility to verify that the DBE firm is certified as a DBE on the date of bid opening by using the California Unified Certification Program (CUCP) database and possesses the most specific available North American Industry Classification System (NAICS) codes and Work Code applicable to the type of work the firm will perform on the contract. Additionally, the prime contractor is responsible to document this verification by printing out the 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>.

DBE participation will only count toward the California Department of Transportation's federally mandated statewide overall DBE goal if the DBE performs a commercially useful function under 49 CFR 26.55.

Credit for materials or supplies the prime contractor 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 obtained 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 26.55 defines "manufacturer" and "regular dealer."

The prime contractor receives credit towards the goal if they employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d) as follows:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
- The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

#### **A. Nondiscrimination Statement**

The contractor, subrecipient or subcontractor will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the Local Agency components of the DBE Program Plan, the contractor, subrecipient or subcontractor will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

#### **B. Contract Assurance**

Under 49 CFR 26.13(b): The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

#### **C. Prompt Progress Payment**

In accordance with California Business and Professions Code section 7108.5, the prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subcontractors.

#### **D. Prompt Payment of Withheld Funds to Subcontractors**

The Agency may hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The Agency shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor. The Agency shall include either Method 1, Method 2, or Method 3 below and delete the other two.

**Method 1:** No retainage will be held by the Agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the

contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

**Method 2:** No retainage will be held by the Agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

**Method 3:** The Agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within seven (7) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Agency. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Any violation of these provisions of Prompt Progress Payment and Prompt Payment of Withheld Funds to Subcontractors shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

## **E. Termination and Replacement of DBE Subcontractors**

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the Agency's written consent. The prime contractor shall not terminate or replace a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without prior written authorization from the Agency. Unless the Agency's prior written consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 15-G Construction Contract DBE Commitment form, included in the Bid.

### Termination of DBE Subcontractors

After a contract with a specified DBE goal has been executed, termination of a DBE may be allowed for the following, but not limited to, justifiable reasons with prior written authorization from the Agency:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The Local Agency stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the Local Agency's bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law, or is not properly registered with the California Department of Industrial Relations as a public works contractor.
4. Listed DBE fails or refuses to perform the work or furnish the listed 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).

5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The Agency determines other documented good cause.

To terminate a DBE or to terminate a portion of a DBE's work, the contractor must use the following procedures:

1. Send a written notice to the DBE of Contractor's intent to use other forces or material sources and include one or more justifiable reasons listed above. Simultaneously send a copy of this written notice to the Agency. The written notice to the DBE must request they provide any response within five (5) business days to both the Contractor and the Agency by either acknowledging their agreement or documenting their reasoning as to why the use of other forces or sources of materials should not occur.
2. If the DBE does not respond within 5 business days, Contractor may move forward with the request as if the DBE had agreed to Contractor's written notice.
3. Submit Contractor's DBE termination request by written letter to the Agency and include:
  - One or more above listed justifiable reasons along with supporting documentation.
  - Contractor's written notice to the DBE regarding the request, including proof of transmission and tracking documentation of Contractor's written notice
  - The DBE's response to Contractor's written notice, if received. If a written response was not provided, provide a statement to that effect.

The Agency shall respond in writing to Contractor's DBE termination request within 5 business days.

#### Replacement of DBE Subcontractors

After receiving the Agency's written authorization of DBE termination request, the Contractor must obtain the Agency's written agreement for DBE replacement. The Contractor must find or demonstrate GFEs to find qualified DBE replacement firms to perform the work to the extent needed to meet the DBE commitment.

The following procedures shall be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to the Agency which must include:
  - a. Description of remaining uncommitted work items made available for replacement DBE solicitation and participation.
  - b. The proposed DBE replacement firm's business information, the work they have agreed to perform, and the following:
    - Quote for bid item work and description of work to be performed
    - Proposed subcontract agreement and written confirmation of agreement to perform on the Contract
    - Revised Subcontracting Request form
    - Revised Exhibit 15-G: Construction Contract DBE Commitment
2. If Contractor has not identified a DBE replacement firm, submit documentation of the Contractor's GFEs

to use DBE replacement firms within 7 days of Agency's authorization to terminate the DBE. The Contractor may request the Agency's approval to extend this submittal period to a total of 14 days. Submit documentation of actions taken to find a DBE replacement firm, such as:

- Search results of certified DBEs available to perform the original DBE work identified and/or other work the Contractor had intended to self-perform, to the extent needed to meet the DBE commitment
- Solicitations of DBEs for performance of work identified
- Correspondence with interested DBEs that may have included contract details and requirements
- Negotiation efforts with DBEs that reflect why an agreement was not reached
- If a DBE's quote was rejected, provide Contractor's reasoning for the rejection, such as why the DBE was unqualified for the work, or why the price quote was unreasonable or excessive
- Copies of each DBE's and non-DBE's price quotes for work identified, as the Agency may contact the firms to verify solicitation efforts and determine if the DBE quotes are substantially higher
- Additional documentation that supports the GFE

The Agency shall respond in writing to the Contractor's DBE replacement request within five (5) business days. The Contractor must submit a revised Subcontracting Request form if the replacement plan is authorized by the Agency.

#### **F. Commitment and Utilization**

The Agency's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The bidder shall complete and sign Exhibit 15-G: Construction Contract DBE Commitment included in the contract documents regardless of whether DBE participation is reported. The bidder shall provide written confirmation from each DBE that the DBE is participating in the Contract. LAPM Exhibit 9-I: DBE Confirmation or equivalent form and DBE's quote must be submitted. The written confirmation must be submitted no later than 4pm on the 5th day after bid opening. If a DBE is participating as a joint venture partner, the bidder shall submit a copy of the joint venture agreement.

If the DBE Commitment form, Exhibit 15-G, is not submitted with the bid, it must be completed and submitted by all bidders to the Agency within five (5) days of bid opening. If the bidder does not submit the DBE Commitment form within the specified time, the Agency will find the bidder's bid nonresponsive.

The prime contractor shall use each DBE subcontractor as listed on Exhibit 15-G: Construction Contract DBE Commitment unless they receive written authorization for a termination or replacement from the Agency.

The Agency shall request the prime contractor to:

1. Notify the Resident Engineer or Inspector of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subcontractor
  - Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each DBE (see Exhibit 9-F: Monthly Disadvantaged Business Enterprise Payment)

If the prime contractor is a DBE contractor, they shall include the date of work performed by their own forces and the corresponding value of the work.

Before the 15th of each month, the prime contractor shall submit a Monthly DBE Trucking Verification (LAPM Exhibit 16-Z1) form.

If a DBE is decertified before completing its work, the DBE must notify the prime contractor in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify the prime contractor in writing of the certification date. The prime contractor shall submit the notifications. Upon work completion, the prime contractor shall complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form and submit the form within 30 days of contract acceptance.

Upon work completion, the prime contractor shall complete Exhibit 17-F: Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it within 90 days of contract acceptance. The Agency will withhold \$10,000 until the form is submitted. The Agency releases the withhold upon submission of the completed form.

### **G. Running Tally of Attainments**

For projects awarded on or after March 1, 2020, but before September 1, 2023:

After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant must complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to local administering agencies.

For projects that are awarded on or after September 1, 2023:

Exhibit 9-F is no longer required. Instead, by the 15th of the month following the month of any payment(s), the prime contractor must now submit Exhibit 9-P to the Local Agency administering the contract. If the Contractor does not make any payments to subcontractors, supplier(s) and/or manufacturers they must report “no payments were made to subs this month” and write this visibly and legibly on Exhibit 9-P.

### **H. Commercially Useful Function**

DBEs must perform a commercially useful function (CUF) under 49 CFR 26.55 when performing work or supplying materials listed on the DBE Commitment form. The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF. A DBE performs a CUF when it is responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF. Additionally, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself.

The Contractor must perform CUF evaluation for each DBE company working on a federal-aid contract, with or without a DBE goal. Perform a CUF evaluation at the beginning of the DBE's work, and continue to monitor the performance of CUF for the duration of the project.

The Contractor must provide written notification to the AGENCY at least 15 days in advance of each DBE's initial performance of work or supplying materials for the Contract. The notification must include the DBE's name, work the DBE will perform on the contract, and the location, date, and time of where their work will take place.

Within 10 (ten) days of a DBE initially performing work or supplying materials on the contract, the Contractor shall submit to the LPA the initial evaluation and validation of DBE performance of a CUF using the LAPM 9-J: Disadvantaged Business Enterprise Commercially Useful Function Evaluation. Include the following information with the submittal:

- Subcontract agreement with the DBE
- Purchase orders
- Bills of lading
- Invoices
- Proof of payment

The Contractor must monitor all DBE's performance of CUF by conducting quarterly evaluations and validations throughout their duration of work on the contract using the LAPM 9-J: DBE Commercially Useful Function Evaluation. The Contractor must submit to the AGENCY these quarterly evaluations and validations by the 5<sup>th</sup> of the month for the previous three (3) months of work.

The Contractor must notify the AGENCY immediately if the Contractor believes the DBE may not be performing a CUF.

The AGENCY will verify DBEs performance of CUF by reviewing the initial and quarterly submissions of LAPM 9-J: DBE Commercially Useful Function Evaluation, submitted supporting information, field observations, and through any additional AGENCY evaluations. The AGENCY must evaluate DBEs and their CUF performance throughout the duration of a Contract. The AGENCY will provide written notice to Contractor and DBE at least two (2) business days prior to any evaluation. The Contractor and DBE must participate in the evaluation. Upon completing the evaluation, the AGENCY must share the evaluation results with the Contractor and DBE. An evaluation could include items that must be remedied upon receipt. If the AGENCY determines the DBE is not performing a CUF the Contractor must suspend performance of the noncompliant work.

The Contractor and DBEs must submit any additional CUF related records and documents within five (5) business days of AGENCY's request such as:

- Proof of ownership or lease and rental agreements for equipment
- Tax records
- Employee rosters
- Certified payroll records
- Inventory rosters

Failure to submit required DBE Commercially Useful Function Evaluation forms or requested records and documents can result in withholding of payment for the value of work completed by the DBE.

If the Contractor and/or the AGENCY determine that a listed DBE is not performing a CUF in performance of their DBE committed work, immediately suspend performance of the noncompliant portion of the work. The AGENCY may deny payment for the noncompliant portion of the work. The AGENCY will ask the Contractor to submit a corrective action plan (CAP) to the AGENCY within five (5) days of the noncompliant CUF determination. The CAP must identify how the Contractor will correct the noncompliance findings for the remaining portion of the DBE's work. The AGENCY has five (5) days to review the CAP in conjunction with the prime contractor's review. The Contractor must implement the CAP within five (5) days of the AGENCY's approval. The AGENCY will then authorize the prior noncompliant portion of work for the DBE's committed work.

If corrective actions cannot be accomplished to ensure the DBE performs a CUF on the Contract, then the Contractor may have good cause to request termination of the DBE.

## **I. Use of Joint Checks**

A joint check may be used between the Contractor or lower-tier subcontractor and a DBE subcontractor purchasing materials from a material supplier if the contractor obtains prior approval from the LPA for the proposed use of joint check upon submittal of the LAPM 9-K: DLA Disadvantaged Business Enterprises (DBE) Joint Check Agreement Request form.

To use a joint check, the following conditions must be met:

- All parties, including the Contractor, must agree to the use of a joint check
- Entity issuing the joint check acts solely to guarantee payment
- DBE must release the check to the material supplier
- LPA must authorize the request before implementation
- Any party to the agreement must provide requested documentation within 10 days of the LPA's request for the documentation
- Agreement to use a joint check must be short-term, not to exceed 1 year, allowing sufficient time needed to establish or increase a credit line with the material supplier

A request for a joint check agreement may be initiated by any party. If a joint check is used, the DBE remains responsible for all elements of 49 CFR 26.55(c)(1).

Failure to comply with the above requirements disqualifies DBE participation and results in no credit and no payment to the Contractor for DBE participation.

A joint check may not be used between the Contractor or subcontractor and a DBE regular dealer, bulk material supplier, manufacturer, wholesaler, broker, trucker, packager, manufacturer's representative, or other persons who arrange or expedite transactions.

## **2. BID OPENING**

The Agency publicly opens and reads bids at the time and place shown on the Notice to Contractors.

## **3. BID RIGGING**

The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.

## **4. CONTRACT AWARD**

If the Agency awards the contract, the award is made to the lowest responsible and responsive bidder.

## **5. CONTRACTOR LICENSE**

The Contractor must be properly licensed as a contractor from contract award through Contract acceptance (23 CFR 635.110).

## **6. CHANGED CONDITIONS**

### **A. Differing Site Conditions**

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
2. Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work.  
*[This provision may be omitted by the Local Agency, at their option.]*

### **B. Suspensions of Work Ordered by the Engineer**

1. If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
2. Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

3. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

### **C. Significant Changes in the Character of Work**

1. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
3. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term "significant change" shall be construed to apply only to the following circumstances:
  - When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
  - When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

## **7. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES**

The Contractor shall begin work within 15 calendar days after the issuance of the Notice to Proceed.

This work shall be diligently prosecuted to completion before the expiration of \_\_\_\_\_ WORKING DAYS beginning on the fifteenth calendar day after the date shown on the Notice to Proceed.

The Contractor shall pay to the City/County \_\_\_\_\_ the sum of \$ \_\_\_\_\_ per day, for each and every calendar days' delay in finishing the work in excess of the number of working days prescribed above.

## **8. BUY AMERICA**

Buy America Requirements apply to steel and iron, manufactured products, and construction materials permanently incorporated into the project.

### **Steel and Iron Materials**

All steel and iron materials must be melted and manufactured in the United States except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials produced outside the United States does not exceed the greater of 0.1 percent of the total contract amount or \$2,500, materials produced outside the United States may be used if authorized.

Furnish steel and iron materials to be incorporated into the work with certificates of compliance and certified mill test reports. Mill test reports must indicate where the steel and iron were melted and manufactured. All melting and manufacturing processes for these materials, including an application of a coating, must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied.

## Manufactured Products

Iron and steel used in precast concrete manufactured products must meet the requirements of the above section (Steel and Iron Materials) regardless of the amount used. Iron and steel used in other manufactured products must meet the requirements of the above section (Steel and Iron Materials) if the weight of steel and iron components constitute 90 percent or more of the total weight of the manufactured product.

## Construction Materials

Buy America requirements apply to the following construction materials that are or consist primarily of:

1. Non-ferrous metals
2. Plastic and polymer-based products [such as:](#)
  - [2.1 Polyvinylchloride](#)
  - [2.2 Composite Building Materials](#)
3. Glass
4. [Fiber optic cable \(including drop cable\)](#)
5. [Optical fiber](#)
6. Lumber
7. [Engineered wood](#)
8. Drywall

[All manufacturing processes for these materials as defined in 2 CFR 184.6 must occur in the United States.](#)

Where one or more of these construction materials have been combined by a manufacturer with other materials through a manufacturing process, Buy America requirements do not apply unless otherwise specified.

Furnish construction materials to be incorporated into the work with certificates of compliance with each project delivery. Manufacturer's certificate of compliance must identify where the construction material was manufactured and attest specifically to Buy America compliance.

All manufacturing processes for these materials must occur in the United States.

Buy America requirements do not apply to the following:

1. Tools and construction equipment used in performing the work
2. Temporary work that is not incorporated into the finished project

## Waivers

If Buy America waivers are granted, use the following language to include in the contract:

The following steel and iron products, manufactured products, or construction materials have received an approved Buy America waiver for this contract, and therefore, are not subject to Buy America requirements:

1. \_\_\_\_\_
2. \_\_\_\_\_

## 9. QUALITY ASSURANCE

The Local Agency uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract. The Local Agency may examine the records and reports of tests the prime contractor performs if they are available at the job site. Schedule work to allow time for QAP.

## 10. PROMPT PAYMENT

### A. FROM THE AGENCY TO THE CONTRACTORS

The Local Agency shall make all project progress payment within 30 days after receipt of an undisputed and properly submitted payment request from the Contractor on a construction contract. If the Local Agency fails to pay promptly, the Local Agency shall pay interest to the Contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied and pro-rated as necessary. Upon receipt of the payment request, the Local Agency shall act in accordance with both of the following:

1. The Local Agency shall review each payment request as soon as feasible after receipt to verify it is a proper payment request.
2. The Local Agency must return any payment request deemed improper by the Local Agency to the Contractor as soon as feasible, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall include documentation setting forth in writing the reasons why it is an improper payment request.

### B. SUBMITTAL OF EXHIBIT 9-P

For projects awarded on or after September 1, 2023:

The Contractor must submit Exhibit 9-P to the Local Agency administering the contract by the 15th of the month following the month of any payment(s). If the Contractor does not make any payments to subcontractors, supplier(s) and/or manufacturers they must report "no payments were made to subs this month" and write this visibly and legibly on Exhibit 9-P.

The Local Agency must verify all Exhibit 9-P information, monitor compliance with prompt payment requirements for DBE and non-DBE firms, and address any shortfall to the DBE commitment and prompt payment issues until the end of the project. The Local Agency must email a copy of Exhibit 9-P to [DBE.Forms@dot.ca.gov](mailto:DBE.Forms@dot.ca.gov) before the end of the month after receiving the Exhibit 9-P from the Contractor.

## 11. FORM FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONTRACTS

*[Form FHWA-1273 must be physically inserted into the contract without modification, excluding ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS.]*

*[The current version of Form FHWA-1273 is accessible at FHWA's website:  
<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>]*

## 12. FEMALE AND MINORITY GOALS

To comply with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the following are for female and minority utilization goals for Federal-aid construction contracts and subcontracts that exceed \$10,000:

The nationwide goal for female utilization is 6.9 percent.

The goals for minority utilization (45 Fed Reg 65984 (10/3/1980)) are as follows:



### MINORITY UTILIZATION GOALS

Economic Area		Goal (Percent)
174	Redding CA: Non-SMSA (Standard Metropolitan Statistical Area) Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA	28.9
	CA Monterey	25.6
	7360 San Francisco-Oakland	
	CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo	
	7400 San Jose, CA	19.6
	CA Santa Clara, CA	
	7485 Santa Cruz, CA	14.9
	CA Santa Cruz	
	7500 Santa Rosa	9.1
	CA Sonoma	
177	8720 Vallejo-Fairfield-Napa, CA	17.1
	CA Napa; CA Solano	
	Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	23.2
	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA	16.1
	CA Placer; CA Sacramento; CA	
	Yolo Non-SMSA Counties	14.3
	CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA	
	Yuba	
	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA	12.3
	CA Stanislaus	
178	8120 Stockton, CA	24.3
	CA San Joaquin	
	Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne	19.8
179	Fresno-Bakersfield, CA SMSA Counties: 0680 Bakersfield, CA	19.1
	CA Kern	
	2840 Fresno, CA	26.1
	CA Fresno	
	Non-SMSA Counties: CA Kings; CA Madera; CA Tulare	23.6

180	Los Angeles, CA:	
	SMSA Counties:	
	0360 Anaheim-Santa Ana-Garden Grove, CA	11.9
	CA Orange	
	4480 Los Angeles-Long Beach, CA	28.3
	CA Los Angeles	
	6000 Oxnard-Simi Valley-Ventura, CA	21.5
	CA Ventura	
	6780 Riverside-San Bernardino-Ontario, CA	19.0
	CA Riverside; CA San Bernardino	19.7
181	7480 Santa Barbara-Santa Maria-Lompoc, CA	
	CA Santa Barbara	24.6
	Non-SMSA Counties	
	CA Inyo; CA Mono; CA San Luis Obispo	
	San Diego, CA:	
	SMSA Counties	
	7320 San Diego, CA	16.9
	CA San Diego	
	Non-SMSA Counties	18.2
	CA Imperial	

For the last full week of July during which work is performed under the contract, the prime contractor and each non material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

### 13. TITLE VI ASSURANCES

*[The U.S. Department of Transportation Order No.1050.2A requires all federal-aid Department of Transportation contracts between an agency and a contractor to contain Appendix A and E.*

*Note: Appendix B only requires inclusion if the contract impacts deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein. Appendices C and D only require inclusion if the contract impacts deeds, licenses, leases, permits, or similar instruments entered into by the recipient.]*

#### APPENDIX A

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONTRACTOR) agrees as follows:

- Compliance with Regulations:** CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- Nondiscrimination:** CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- Solicitations for Sub-agreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub- agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- Information and Reports:** CONTRACTOR shall provide all information and reports required by the

Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the recipient or FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with the nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - i. withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - ii. cancellation, termination or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the recipient enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

## **APPENDIX B**

### **CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW THEREFORE**, the U.S. Department of Transportation as authorized by law and upon the condition that the recipient will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

#### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto the recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the recipient, its successors and assigns. The recipient, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the recipient will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title

VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

## **APPENDIX C**

### **CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the recipient pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the recipient and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX D

### CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the recipient pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the recipient will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the recipient will there upon revert to and vest in and become the absolute property of the recipient and its assigns.

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

## APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

### Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such

programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Federal Trainee Program Special Provisions  
(to be used when applicable)

#### 14. FEDERAL TRAINEE PROGRAM

For the Federal training program, the number of trainees or apprentices is \_\_\_\_.

This section applies if a number of trainees or apprentices is [shown on the Notice of Bidders](#).

As part of the prime contractor's equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

The prime contractor has primary responsibility for meeting this training requirement.

If the prime contractor subcontracts a contract part, they shall determine how many trainees or apprentices are to be trained by the subcontractor. Include these training requirements in each subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of the prime contractor's needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, the prime contractor shall submit to the City/County of \_\_\_\_\_ :

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

The prime contractor shall obtain the City/County of \_\_\_\_\_ approval for this submitted information before the prime contractor starts work. The City/County of \_\_\_\_\_ credits the prime contractor for each apprentice or trainee the prime contractor employs on the job who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section is to train and upgrade minorities and women toward journeyman status. The prime contractor shall make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area and show that they have made the efforts. In making these efforts, the prime contractor shall not discriminate against any applicant for training.

The prime contractor shall not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training

The prime contractor shall ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. The prime contractor's records must show the employee's answers to the questions.

In the training program, the prime contractor shall establish the minimum length and training type for each classification. The City/County of \_\_\_\_\_ and FHWA approves a program if one of the following is met:

1. It is calculated to:
  - Meet the equal employment opportunity responsibilities
  - Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, and it is administered in a way consistent with the equal employment responsibilities of Federal-aid highway construction contracts

The prime contractor shall obtain the State's approval for their training program before they start work involving the classification covered by the program.

The prime contractor shall provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower-level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The City/County of \_\_\_\_\_ reimburses the prime contractor 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a Federal-aid project and prime contractor does at least one of the following:
  - a. Contribute to the cost of the training
  - b. Provide the instruction to the apprentice or trainee
  - c. Pay the apprentice's or trainee's wages during the off-site training period
3. If the prime contractor complies with this section.

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

Furnish the apprentice or trainee a:

1. Copy of the training plan approved by the U.S. Department of Labor or a training plan for trainees approved by both Caltrans and FHWA
2. Certification showing the type and length of training satisfactorily completed

Maintain records and submit reports documenting contractor's performance under this section.

## **15. PROHIBITION OF CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE EQUIPMENT AND SERVICES**

In response to significant national security concerns, the agency shall check the prohibited vendor list before making any telecommunications and video surveillance purchase because recipients and subrecipients of federal funds are prohibited from obligating or expending loan or grant funds to:

- Procure or obtain;
- Extend or renew a contract to procure or obtain; or
- Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

The prohibited vendors (and their subsidiaries or affiliates) are:

- Huawei Technologies Company;
- ZTE Corporation;
- Hytera Communications Corporation;
- Hangzhou Hikvision Digital Technology Company;
- Dahua Technology Company; and
- Subsidiaries or affiliates of the above-mentioned companies.



In implementing the prohibition, the agency administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

The contractors should furnish telecommunications and video surveillance equipment with a certificate of compliance. The certificate must state telecommunications and video surveillance equipment was not procured or obtained from manufacturers identified in the above list.