

Memorandum

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To: DEPUTY DISTRICT DIRECTORS, Construction
DEPUTY DIVISION CHIEF, Structure Construction
CONSTRUCTION MANAGERS
SENIOR CONSTRUCTION ENGINEERS
RESIDENT ENGINEERS

Date: October 26, 2023

File: Division of Construction
CPD 23-7



From: RAMON HOPKINS, Chief
Division of Construction

Subject: **SMALL BUSINESS ENTERPRISES GOAL PROJECTS**

On September 14, 2023, the California Department of Transportation (Caltrans) Office of Civil Rights issued a memorandum titled, "Small Business Enterprises Participation Goal Requirement Implementation for State-Only Funded Projects." See Attachment 1. The memorandum announces an initial 5 percent small business enterprises (SBE) participation goal on non-emergency contracts that are state-funded only, and have bid openings after October 1, 2023. The initial 5 percent goal may be adjusted on future advertised contracts. The specific contractual SBE goal will be shown in *Notice to Bidders* for applicable projects. This directive provides contract administration guidance for these new requirements.

At bid opening, bidders will have provided SBE commitment and SBE confirmation forms to establish they have met or exceeded the SBE goal for the contract as a condition of a responsive bid. Only firms that are certified by the Department of General Services, Office of Small Business and Disabled Veteran Business Enterprise Services as either a "small business" or a "small business for the purpose of public works" will receive commitment credit toward satisfying the SBE goal. Goal information will be reviewed by Caltrans' Office of Civil Rights during bid evaluation. The successful bidder's commitment form will become part of the contract award package sent to the district Construction office for use by the contract's resident engineer in monitoring SBE commitments during construction.

While it is the prime contractor's responsibility to meet SBE usage commitments, resident engineers, with assistance from their Labor Compliance offices, must verify that the small business enterprises identified on the SBE commitment forms are performing the described work throughout construction. Additionally, payments made to the small business enterprises should be monitored through the prompt payment monitoring system at <https://caltrans.dbesystem.com>. If SBE work is performed by a firm other than the committed SBE or an authorized SBE substitute, a violation has occurred.

DEPUTY DISTRICT DIRECTORS, Construction et al.

October 26, 2023

Page 2 of 2

Determine the value of the listed SBE's work that was not performed by the listed SBE or an authorized SBE substitute and apply a permanent deduction for this amount.

If there is a contractor request for substitution of a SBE, verify that the contractual requirements of Attachment 2, Section 5-1.13F, "Small Business Enterprises," of the Special Provisions, are being followed. Authorize substitutions in writing. The authorized substitute is to be another certified SBE; however, the substitute may have received their SBE certification after the contract's bid opening date.

Within 10 days of contract acceptance, the contractor must submit Form OCR-SB03, "Final Report – Utilization of Small Business Enterprises," that was provided in the *Information Handout*. Note that this form will be available in the Caltrans Electronic Forms System in the future. If the form is not submitted, withhold the greater of 10 percent of contract's SBE commitment amount or \$10,000 until the form is submitted. Release the withhold upon receipt of the completed form. In the event additional payments are made to a SBE after the completed form was submitted, the contractor is to submit an updated form that reflects the additional payments.

Attachment 3, Form OCR-SB03, "Final Report – Utilization of Small Business Enterprises," is to record payments to committed SBE, substitute SBE, and other SBE firms that received payments for work performed. Discuss any discrepancies regarding SBE-committed work and final reporting with your Labor Compliance office.

If you have questions or comments regarding this directive, contact Ken Darby, Division of Construction, at Ken.Darby@dot.ca.gov or (916) 764-6929.

Attachment:

1. Memorandum, "Small Business Enterprises Participation Goal Requirement Implementation for State-Only Funded Projects"
2. Section 5-1.13F, "Small Business Enterprises," of the Special Provisions
3. Form OCR-SB03, "Final Report – Utilization of Small Business Enterprises"