

SECTION IX.

Neutral Remedies

The study team reviewed neutral remedies in five broad categories:

- Business outreach and communication;
- Technical assistance;
- Access to capital;
- Contracting practice improvements; and
- Data collection, tracking and reporting.

These categories incorporate the ten specific neutral elements for the implementation of a race-neutral Federal DBE Program outlined in 49 CFR Part 26. Figure IX-1, on page 2, summarizes each element and sub-element and the corresponding category of recommendation that addresses it.

Some of these recommendations may require changes in contracting procedures that can only be accomplished through new state law. Certain initiatives would also require significant additional resources. The initiatives discussed in this section are examples of what Caltrans might consider and are not exhaustive of possible neutral measures.

Business Outreach and Communication

A consistent theme in all of the interviews with small businesses—and especially those located in more rural areas of the state or with limited technological capacity—was the shortage of information available to them about how to bid and work on Caltrans projects. Many small businesses are unaware of places to learn about bidding opportunities, how to identify and connect with potential prime contractors, and about the general procedures for bidding on and completing Caltrans contracts.

Consistent with the September 21, 2006, directive from Director Kempton, the study team recommends multiple outreach and communication strategies to improve small businesses' awareness of bidding opportunities and procedures. These should be considered supplemental to existing strategies, including the publication and distribution of the annual Caltrans Quick Reference for Contractors, which provides useful information but is relatively unknown to many of the businesses with whom the study team spoke.

Notice of opportunities. Caltrans provides information about contracting and subcontracting opportunities on its website. Caltrans could make further efforts to educate contractors and subcontractors on how to locate and use this information.

**Figure IX-1.
Neutral Remedies in 49 CFR Part 26**

Remedies	Neutral Program	Construction		Engineering	
		Primes	Subs	Primes	Subs
1. Change contracts to facilitate DBE and other small business participation a. Arrange solicitation and times to facilitate small business participation b. Arrange quantities and delivery schedules to facilitate small business participation c. Arrange specifications and other requirements to facilitate small business participation d. Encourage primes to subcontract work that they otherwise might perform with their own forces	Contracting Process Improvements	●		●	
	Contracting Process Improvements	●		●	
	Contracting Process Improvements	●	●	●	●
	Contracting Process Improvements		●		●
2. Provide assistance in obtaining bonding and financing a. Simplify bonding process b. Reduce bonding requirements c. Eliminate the impact of surety costs from bids d. Provide services to small businesses to obtain bonds e. Provide services to small businesses to obtain financing	Access to Capital	●			
	Contracting Process Improvements	●			
	Contracting Process Improvements	●			
	Financial Assistance	●			
	Technical Assistance	●	●	●	●
3. Provide technical assistance and other services	Technical Assistance				
4. Carry out information and communications programs a. Provide information on contract procedures b. Provide information on specific contract opportunities c. Disseminate information to prime contractors on potential subcontractors d. Provide information in languages other than English where appropriate	Business Outreach & Communications	●		●	
	Business Outreach & Communications	●	●	●	●
	Business Outreach & Communications		●		●
	Business Outreach & Communications	●	●	●	●
5. Implement a supportive services program a. Develop business management capability b. Develop record keeping and financial and accounting capability	Technical Assistance	●	●	●	●
	Technical Assistance	●	●	●	●
6. Provide services to achieve long-term development and self-sufficiency a. Improve long-term development b. Increase opportunities to participate in a variety of kinds of work, have increasingly significant projects and achieve eventual self-sufficiency	Technical Assistance	●	●	●	●
	Technical Assistance	●	●	●	●
7. Assist new, startup firms, particularly in fields in which DBE participation has historically been low	Technical Assistance	●	●	●	●
8. Ensure distribution of DBE directory to potential prime contractors	Technical Assistance		●		●
9. Assist firms in developing their capability to utilize emerging technology and conduct business through electronic data	Technical Assistance	●	●	●	●
10. Other measures a. Prompt payment 49 CFR 26.29	Contracting Process Improvements	●	●	●	●

Source: BBC Research and Consulting.

In addition to improving visibility, Caltrans could take additional steps to reduce real and perceived barriers to MBE/WBE and DBE participation in the RFP and RFQ processes. Strategies might include sending notice to registered firms within the relevant fields, enclosing lists of potential subcontractors as an attachment to the solicitation, and providing information in languages other than English.

Notice of contracts. At regular intervals (monthly or quarterly), Caltrans might also issue notice of contracts awarded and thereby inform small businesses about which firms received awards or entered agreements with Caltrans during the relevant period. Distributing these notices in sources beyond the Caltrans website would improve small businesses' ability to identify and target their marketing efforts to firms that have worked or are working with Caltrans.

Electronic media. Caltrans could further develop the content of its website to include more detailed information about doing business with the department, solicitation notices, bid lists, bids and proposals, bid status reports, and other appropriate information. This site could contain a summary overview on the certification process and calendars of upcoming events, workshops, bid meetings and current and future projects and deadlines at least one month in advance. Caltrans might also consider developing an independent site, linking from the Department's homepage, upon which professionals and Caltrans staff can post discussions, address frequent questions, and host live virtual forums for networking and identifying opportunities to partner on bids.

In addition to quarterly publication of the complete CUCP directory as an electronic database file, Caltrans could utilize Web-based database applications to permit firm searches on a variety of criteria, including firm name, geographic scope, primary field, past certifications and certifying agency. Caltrans could also publish a similar database search interface for the bidders list that it will develop in compliance with the Federal DBE Program mandate.

Communication channels. Caltrans should strengthen existing relationships and seek new relationships with trade associations and professional organizations, including those with small business and minority- and women-owned constituencies. Regular communication with these groups could consist of updates about the Department's implementation of the Federal DBE Program, adjustments to contracting requirements and notice of bidding opportunities.

As a service to these groups and to facilitate a two-way flow of information between current and prospective bidders and contractors, Caltrans could advertise and encourage businesses to attend events hosted by trade organizations. The Department could also maintain and publish a listing of such trade organizations and their individual missions to assist bidders and contractors in identifying additional sources of technical support and information.

Feedback channels. Feedback from contractors is critical for Caltrans to be successful in its outreach efforts. BBC recommends a Web-based interface for comments (including anonymous comments) that would be forwarded by email. Such interface should be accessible through a clearly-labeled link on the Department's homepage. Additionally, Caltrans could improve visibility of procedures for submitting feedback regarding bid processes and contract administration through other channels such as toll-free comment/question lines and frequent public meetings in the districts.

Outreach. Caltrans should expand outreach efforts through a formal, consistently-applied program for increasing small business participation in the construction and engineering contracting process. Elements of this comprehensive plan might include:

- District- or region-level events at which prime contractors could meet new and existing small subcontractors with interests in performing elements of future Caltrans projects;
- Networking events for small businesses to meet each other and to exchange information about business practices, training opportunities and other insights;
- Division-specific trade shows, procurement fairs, seminars, and training conferences at which interested firms could meet Caltrans procurement staff and learn about general procurement policies and procedures; and
- Contract-specific pre-bid conferences at which firms can ask questions about bid applications and registration/certification processes as well as identify potential partners.

Although these activities may be occurring in some districts, Caltrans should ensure that all districts have active outreach programs.

Technical Assistance

Caltrans currently contracts supportive services for small businesses and for disadvantaged business enterprises and intends to coordinate future supportive services through the state's community college system. The schedule of services has included valuable information on payroll and accounting, marketing plans, trade-relevant computer applications, and strategies for securing financial and bonding assistance. The study team recommends continuing these existing services, expanding the scope of services dramatically, and expanding the geographic reach of these services. These services should also be tiered to the specific stage of business development of individual firms (e.g., develop more sophisticated assistance for firms that may be looking to expand into prime contracting or diversify into new fields).

General assistance. Caltrans should continue to implement and monitor a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for small businesses. Caltrans should consider the recommendations that its current supportive services contractor offers regarding the types and locations of services and the strategies for marketing these to the diverse needs, availability and geographic dispersion of interested firms.

Advanced assistance. Caltrans should consider directing more technical attention to planning, marketing, insurance, and workforce training for small businesses. Such assistance would benefit firm owners and managers who have graduated the Department's introductory business assistance workshops and those who are interested in expanding the scope or scale of their older and more established businesses.

New technology training. Caltrans could conduct training workshops to assist small businesses with utilizing emerging technology and conducting business through electronic media. Realistically, doing business with Caltrans requires Internet access and computer systems. Workshops on selecting, managing and adapting information technology infrastructures are important as Caltrans and other public sector solicitors move towards electronic modes of communication and commerce.

Caltrans contracting. Caltrans could organize regular workshops on “doing business with Caltrans.” These workshops could address the general procedures and requirements to complete and submit bids for Caltrans contracts, sources for information about solicitations, best practices to identify subcontracting opportunities with larger firms, and assistance with the certification process for small, disadvantaged or disabled veteran business status. Such workshops should be tiered to the level of experience and sophistication of business owners and managers.

At least one Caltrans contracting workshop could be held quarterly in each of the twelve Caltrans districts, and the location of these workshops could vary within each district. For example, meetings in District 6 might be held in Fresno, Bakersfield, Visalia and Madera.

Mentor-protégé program. Caltrans has pilot mentor-protégé programs for firms working with procurement and contract managers in the District 7 (Los Angeles) and District 4 (Oakland) offices. Four other districts have made significant in-roads toward starting a mentor-protégé program.

Pursuant to Executive Order S-11-06, Caltrans should provide stronger assistance to the districts in developing, engaging support for, and implementing a similar program throughout the state. Where appropriate, district leadership should partner with local small business development centers for technical and administrative assistance.

In addition to coordinating the selection and match of mentor-protégé relationships between established firms and small businesses throughout the state, Caltrans could draft and implement a program of evaluations to determine participants’ satisfaction and to document outcomes for small businesses partners. Outcomes would be determined through a mix of qualitative and quantitative evidence, such as anecdotal interviews with participants, bid success rates, changes in annual revenue, and other critical measurements of business vitality and growth.

Access to Capital

As illustrated by the quantitative and qualitative evidence in Appendices F and I, access to capital is critical to starting and growing a business within California’s transportation construction and engineering industry. Capital requirements for bidding and completing work in this industry favor larger firms. Conversely, firms that are owned and controlled by members of economically disadvantaged groups experience continued barriers to sources of capital necessary to finance their business and to compete for projects in both the private and public sectors.

Given these findings, the study team recommends that Caltrans utilize existing programs and take proactive steps to develop its own programs of financial, insurance and bonding assistance to small businesses. Consideration of such strategies is particularly timely in light of Executive Order S-11-06 and the creation of the Small Enterprise Office within the Business, and Transportation Housing Agency.

Financial assistance. Caltrans could also help small businesses to utilize resources from the California Small Business Loan Guarantee Program. This program allows a business to obtain a loan or line of credit that it could not otherwise obtain from private sector sources.

Insurance assistance. Caltrans should take direct steps to assist small businesses in obtaining adequate insurance to compete for contracts and subcontracting opportunities on construction and engineering projects. Caltrans should make insurance requirements a focal element of its communication, outreach and training programs. Additionally, Caltrans should consider a program to provide individualized assistance to small businesses seeking to satisfy the insurance requirements of specific contracts or contract types.

Bonding assistance. Caltrans could implement a bonding assistance initiative to provide emerging contractors and other small businesses with improved means to satisfy requirements for larger projects. A statewide small business bonding program is awaiting legislative approval and funding during the current session (AB1641). The projected \$40 million program could provide assistance to cover 300 to 500 prime contracts and subcontracts per year, in amounts ranging from \$50,000 to \$200,000 per recipient on a contract. Most of these prime contracts and subcontracts will be with Caltrans.

Contracting Practice Improvements

Many of the business owners and trade association leaders interviewed for this study reported barriers to their participation in Caltrans contracts that stemmed from the size of contracts, the requirements to bid and complete contracts, and the daily administration of contracts and payment. Many business owners recognize that these barriers are difficult to change. However, certain improvements in the area of contracting procedures could greatly reduce the barriers that small businesses encounter in working with Caltrans.

Segmenting contracts. To comply with the Federal DBE Program, Caltrans must arrange solicitations, times for the presentation of bids, project size, specifications, and delivery schedules in ways that facilitate participation by small businesses. Consistent with this requirement, Caltrans should split large contracts to make them more accessible to small businesses and should encourage prime contractors to subcontract portions of work that they might otherwise perform with their own forces.

Breaking up highway projects into smaller segments is difficult. Several participants in the study's interviews indicated that preliminary steps towards contract segmentation were underway for projects let by the Consultant Services Division. A recent directive to that division called for the creation of contracts for \$500,000 or less to help small businesses compete for a larger share of the contract dollars for engineering and professional services.

Recognizing that contract segmentation may be occurring for some types of work or for some districts, Caltrans should develop procedures for encouraging organization-wide efforts across all districts.

Relaxing requirements. To the extent permitted by law and, where possible, with appropriate amendment to law, Caltrans should engage in certain efforts to simplify the bidding process, relax or reduce bonding and insurance requirements, and minimize or eliminate the impact of surety costs from bids. However, some of these requirements are written into state law and would require new legislation.

Prompt payment. Caltrans should improve its enforcement of "prompt pay" rules as they relate to internal timelines for distributing payment for services and to the schedules governing prime contractors' distribution of payment to subcontractors. Caltrans could require contractors to provide business accounts for direct payment transfers.

Caltrans should also communicate with subcontractors regarding payments to prime contractors and provide procedures for subcontractors to issue grievances regarding undue delay in payment. Strict and consistent penalties could be levied against prime contracting firms that do not distribute payment to subcontractors within 10 working days of a Caltrans invoice payment.

Joint venture contracting. Caltrans should consider a program of incentives to encourage joint ventures between more and less experienced businesses on its construction and engineering contracts. This program would include oversight and adequate reporting procedures to measure firms' satisfaction with participation and outcomes for the less experienced firm. Measurable outcomes might include quality of experience, contacts and resources generated as a result of close working relationships with mentoring firms.

Staff training. Caltrans should develop and implement Department-wide training programs for all procurement and contract administrative staff. In addition to educating staff regarding the Department's initiatives to increase utilization of small businesses, such training would address internal business climate issues that may affect the success of minority- and women-owned businesses seeking bid opportunities for construction and engineering projects.

Contracting staff should receive additional guidance about new outreach and communication strategies and about technical and capital assistance for small businesses. They should be equipped with directories to assist small businesses in identifying bid opportunities, frequent contractors, professional associations, training workshops and other events of interest.

Data Collection, Tracking and Reporting

Following the guidelines of 49 CFR Section 26 and the recommendations of both the U.S. Department of Transportation and the U.S. Commission on Civil Rights, the study team highly recommends that Caltrans improve its data collection, tracking and reporting requirements and procedures. The recommended improvements will ensure compliance with the letter and spirit of existing federal legislation and will inform and aid future adjustments to the Department's implementation of the Federal DBE Program.

Comprehensive bidders list. Caltrans should develop a master database of prime contractors, subcontractors, suppliers, truckers and other firms available to work on state transportation construction and engineering contracts. This bidders list would compile firm-specific information on every prime contractor and subcontractors, even if the prime contractor is an unsuccessful bidder.

Caltrans does not have a comprehensive bidders list today because of lack of contractor participation. To address this need, Caltrans should make it a condition of bid that the prime contractor and subcontractors have completed a bidder registration form at time of bid. Such registration can be submitted with the bid. Any subcontractors, including second-tier subcontractors, truckers and suppliers, added after time of bid would also require a completed bidder registration form. Caltrans should require contractors to periodically update the bidder registration information.

In addition to being a required element of the Federal DBE Program (49 CFR Section 26.11 (b)), a comprehensive bidders list will assist Caltrans in setting annual DBE goals in the future, in conducting outreach to prospective contractors and tracking the types of firms receiving work. The database also allows small and emerging subcontractors and suppliers to make themselves known to potential prime contractors.

The Federal DBE Program requires collection of each firm's name, address, ownership status (DBE or non-DBE), founding date and average annual gross receipts by size class. Additionally, the BBC study team recommends that Caltrans obtain the gender and the race and ethnicity for all firms, including those that are not DBE-certified; complete contact information including e-mail address; DUNS, EIN or other firm identification number; work specialization; and geographic reach.

DBEs and non-DBE prime contractors and subcontractors should be treated equally in complying with this requirement. This initiative would require additional databases and staff time to implement and evaluate bidders' responsiveness or responsibility. Development of a bidders list is a necessary step to implement several of the other recommendations.

Additionally, Caltrans should create an effective way for businesses to revise their contact information on the bidders lists and in the CUCP directory. The study team highly recommends an update form online in addition to any paper-based registration and update forms.

Time of award subcontractor information. At present, Caltrans' electronic databases do not consistently record non-DBE subcontractors. Such data collection is a required element of the Federal DBE Program. Caltrans will be unable to accurately track the percentage of subcontracting work that goes to DBEs without these data. Other state departments of transportation have successfully developed these data collection systems.

At present, Caltrans requires construction contractors to submit a Form 1201 that lists subcontractors in order to confirm that the prime contractor is performing more than one-half of the work. District-level staff should record firm information and subcontract amounts for each of the subcontractors (DBEs and non-DBEs alike) into an electronic database. As a requirement to bid, each of these firms would need to be identified in the Caltrans bidders list.

Final subcontractor payment information. Caltrans does not consistently collect payment information for non-DBE subcontractors. Clarifying and enforcing the reporting requirements for Form 2402 is a first step. Caltrans should train district-level staff to enter these reports into an electronic database of actual utilization.

Information on major suppliers and truckers. At present, Caltrans does not require prime contractors to identify suppliers and truckers. Rather, Caltrans requires this information only when a DBE supplier or trucker was used to meet a DBE project goal. Caltrans can more easily track relative DBE and non-DBE supplier and trucker participation if this information were consistently collected at the time of bid and in a final report of utilization. The study team suggests that Caltrans consider extending the reporting requirements of Form 2402 to include suppliers and truckers.

Proposed and actual engineering utilization. Several districts have developed electronic databases that track invoice amounts for prime consultants and subconsultants on engineering contracts. The BBC study team recommends that Caltrans extend these districts' efforts across the Department. Staff in each district should record firm-specific payment information for every task order and contract. The Central Region's invoice tracking procedure and District 8's summary reports are potential models for a new Department-wide system.

To facilitate consistency in reporting procedures across divisions, Caltrans should require the completion of an equivalent to Forms 1201 and 2402 for each task order completed under a contract agreement. District-level staff should enter the information from these forms into an engineering contracts database separate from the invoice tracking spreadsheets discussed above. Such reporting procedures would centralize the relevant utilization data within a single set of contract-specific source documents and provide an additional check between proposed utilization, invoiced expense, and actual utilization.

Similar collection for state-funded contracts. Data for state-funded contracts provide a point of comparison for evaluating the relative success of any future initiatives that focus on federally-funded contracts. To improve the reliability of these comparisons, Caltrans should require bidders list registration and similar contract reporting procedures for its state-funded contracts as for federally-assisted contracts. The same systems described above and be implemented for state-funded contracts.

Registration and reporting from local agencies. Federal DBE Program requirements extend to subrecipients receiving federal assistance administered by Caltrans. Caltrans should work with local agencies to develop consistent bidder registration and data reporting procedures. Caltrans could assist by opening its own bidders list for local agency use. These procedures should resemble those adopted for construction and engineering contracts let by Caltrans and should be applied for all local agency contracts, regardless of the fund's source (federal or state).

As a first step, the BBC study team recommends modifications to and the extension of reporting requirements now contained in Forms 17F and 15G. Additionally, district local assistance engineers should be equipped with a standardized database and guidance for entering firm-specific information for contracts executed using federal and state funds from Local Assistance.

Certification of DBEs

Caltrans will also need to do more to streamline DBE certification for new and renewing DBE firms. It will be important for Caltrans to communicate the benefits of DBE certification. A fraction of minority- and women-owned firms in the California transportation contracting industry are currently DBE-certified.

Resource Requirements

Implementation of these recommendations across an organization as large and complex as Caltrans is difficult. Other state and federal requirements govern bidding and contract management processes. Districts have different data collection and compilation practices that will need to be standardized. Caltrans works with more than 600 local agencies, all of which may need guidance on any new procedures. A large contractor pool must also be informed about the new requirements and programs.

Because of these complexities, Caltrans should proceed cautiously in implementing the above recommendations. It must also add resources to implement neutral programs and to track MBE/WBE as well as DBE utilization.