**Background**

Effective October 2, 2014, the U.S. Department of Transportation (U.S. DOT) revised its Disadvantaged Business Enterprise (DBE) program regulations under Title 49 of the Code of Federal Regulations, Part 26. The revisions consist of the following requirements:

- Uniform Report of DBE Awards or Commitments and Payments. The report captures “real time” DBE payments and a breakdown of participation by minority women-owned DBEs.
- Evaluation of good faith efforts.

Caltrans Office of Business and Economic Opportunity and Office of Office Engineer issued policy to promote awareness of changes to the regulations. The Division of Construction has developed a new form to comply with the U.S. DOT’s revised DBE regulations for uniform report of DBE awards or commitments and

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payments. Caltrans Office of Office Engineer has revised Form DES-E-0102.11A, “DBE Good Faith Efforts Documentation” to comply with U.S. DOT’s revised regulation for good faith efforts.

Existing Procedure

There is no existing procedure to submit DBE monthly payment information.

New Procedure

Uniform Report of DBE Awards or Commitments and Payments

For ongoing projects, as of October 2, 2014, Form CEM-2406, “Monthly Disadvantaged Business Enterprises (DBE) Payment,” is due from the contractor for all DBE payments made between October 2, 2014 and February 27, 2015. Reporting for March 2015 is due by April 15, 2015. All subsequent months are due from the contractor by the 15th of the month for work performed in the prior month. The form is also required for months with no DBE payments. The resident engineer must email a copy of the form to the Office of Business and Economic Opportunity at business.support.unit@dot.ca.gov. The contractor may request a change order for reimbursement to complete the form.

If the contractor fails to submit Form CEM-2406 monthly, the resident engineer must withhold 25 percent of the progress payment but not more than 10 percent of the total bid under 9-1.16E(3) of the Standard Specifications.

The new Form CEM-2406 is available at:

http://www.dot.ca.gov/hq/construc/forms.htm

Evaluation of Good Faith Efforts

A substitute DBE must possess the work category codes applicable to the type of work they will perform on the contract. The prime contractor must submit good faith effort documentation within 7 days of DBE substitutions. The timeline may be extended an additional 7 days at the contractor’s request.

The following sections of the Construction Manual will be added or updated with the requirements for DBE payment and utilization. Directions for the location of the additions or updates are given in brackets. Updates to existing text are indicated by change bars in the margin.

Section 5-101B, “Construction Forms”

[The following is inserted after Form CEM-2404(F).]

Form CEM 2406 Monthly Disadvantaged Business Enterprises (DBE) Payment

The contractor submits this form monthly by the 15th of the month for the previous month’s work. The resident engineer retains the form in the construction project records, and submits a copy to Office of Business and Economic Opportunity. If the contractor fails to provide this form the resident engineer withholds money from the progress payment in accordance with Section 9-1.16E(3), “Performance Failure Withholds,” of the Standard Specifications.
Section 5-102C  Description of Categories

[The following is added to Category 24 after the seventh bullet.]

- Form CEM-2406, “Monthly Disadvantaged Business Enterprises (DBE) Payment.”

Section 8-303A, “Disadvantaged Business Enterprise and Disabled Veteran Business Enterprise Commitment Form”

[The following paragraph will be updated as indicated.]

The DBE or DVBE commitment form provides the resident engineer with a listing of specific work to be done or materials to be furnished by specific DBEs or DVBEs and is based on information the contractor submitted during the bidding process. The resident engineer will receive the approved commitment of DBE or DVBE participation in the award package. For DBE participation commitments, bidders use Form DES-OE-0102.10D, “DBE - Commitment.” For DVBE participation commitments, bidders use Form DES-OE-0102.5, “Certified DVBE Summary.” For DBE good faith efforts, bidders use Form DES-E-0102.11A, “DBE Good Faith Efforts Documentation.” The percentage specified in the original contract advertisement may differ from the approved listing, which is a specific contract commitment from the contractor. The contractor must meet the DBE or DVBE commitment, regardless of the contract percentage.

Section 8-304A, “Monitoring and Enforcement”

[The following item will be added and the six subsequent items renumbered.]

5. Ensure the contractor submits Form CEM-2406, “Monthly Disadvantaged Business Enterprises (DBE) Payment,” by the 15th of the month for the previous month’s activities.

Section 8-305, “Forms Required After Contract Acceptance”

[Subsection 8-305C will be added.]

8-305C  Monthly Disadvantaged Business Enterprises (DBE) Payment

The purpose of monthly DBE payments is to comply with the uniform report of DBE awards or commitments and payments to ensure “real time” payments and breakdown of participation by minority women-owned DBEs.

The resident engineer ensures the contractor submits a completed Form CEM-2406, “Monthly Disadvantaged Business Enterprises (DBE) Payment,” including explanation of differences between the original commitment and payment to the DBE in the comment section. A copy is emailed to the Office of Business and Economic Opportunity.

If you have any questions or comments regarding this bulletin, please contact Phillina Lyles, Division of Construction, at phillina.lyles@dot.ca.gov or (916) 654-3501.