



Race Conscious DBE Program Implementation Frequently Asked Questions

1. *Why are we going back to a Race Conscious DBE Program?*

The findings from the Caltrans Availability and Disparity Study revealed that the Department should return to a Race Conscious Program to address underutilization.

2. *What were the results of the Disparity Study?*

“Statistically significant” underutilization was found in four of the six groups presumed to be disadvantaged as defined by the Code of Federal Regulations, 49 CFR Part 26. The four groups were African American, Asian Pacific American, Native American and Women. Hispanic Male and Subcontinent Asian male groups did not show statistically significant underutilization. The Subcontinent Asian male group includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.

3. *How will the transition back to the Race Conscious DBE Program impact federal-aid projects?*

- All contracts awarded after May 31, 2009, shall include race conscious DBE requirements (i.e. contract goals, good faith efforts).
- Any project that receives Authorization to Proceed under the old Race Neutral (RN) DBE requirements must award the contract by May 31, 2009.
- Any Authorization to Proceed received under the old RN DBE requirements that does not meet the May 31, 2009 contract award deadline shall be re-evaluated. Local agencies must resubmit their projects to Caltrans for approval to ensure compliance with the new RC DBE requirements prior to bid opening.
- Contract awarded after May 31, 2009, without meeting the new RC DBE requirements will be ineligible for federal funding.
- Local agencies' Requests for authorization to Proceed for projects under the old RN DBE Program will continue to be received and processed subject to the preceding conditions.
- In submitting Requests for Authorization to Proceed for projects under the old RN DBE Program, the project sponsors need to be mindful of the minimum advertising period of three weeks, and the time it takes for bid opening and contract approval by their governing bodies.
- Requests for authorizations to Proceed with the new RC DBE requirements may be submitted for processing and have funds obligated/authorized before the DLAE receives the new DBE Implementation Agreements; however, projects shall not be awarded prior to the approval of the new DBE Implementation Agreement by the DLAE.
- Existing federal-aid project contracts authorized after May 1, 2006, shall continue under the old RN DBE Program.

4. *How do the Disparity Study results affect the local agencies' Annual Anticipated DBE Percentage Levels (AADPLs)?*

The Disparity Study results require local agencies to split out their AADPLs into Race Neutral and Race Conscious portions. The Race Conscious portion of the AADPL is limited to the four underutilized groups. The Race Neutral portion of the AADPL is inclusive of all six groups.

5. *If local agencies have previously submitted their 2009 AADPLs prior to the transition back to a Race Conscious DBE Program, are they required to resubmit their AADPLs?*

No, local agencies are not required to resubmit their 2009 AADPLs. They are, however, required to determine the portion of the AADPLs they believe they can meet through race neutral means, and the portion of their AADPLs they can meet through using contract goals (race conscious), and set individual contract goals. To determine the Race Neutral portion of the AADPL, local agencies may use the previous year's actual DBE attainment level. The remaining percentage of the AADPL may be the Race Conscious portion.



6. *The Overall Statewide Goal is 13.5% (6.75w% Race Neutral, 6.75% Race Conscious). Can local agencies adopt this goal instead of calculating their own AADPLs?*

No, in order to maintain a narrowly tailored DBE Program, local agencies must calculate their AADPLs based on their respective market areas, types of work, and total dollars.

7. *Are local agencies' proposed AADPLs subject to a 45-day public comment period and consultation with minority, women's and general contractor groups, etc.?*

A public comment period is not required in the development of local agencies' AADPLs.

8. *What is a UDBE?*

A UDBE is an underutilized Disadvantaged Business Enterprise. UDBEs fall into one of the following groups: African American, Asian Pacific American, Native American, and Women.

9. *How do local agencies and contractors locate UDBEs in the California Unified Certification Program (CUCP) data base? Is there a UDBE certification?*

There is no specific certification for UDBEs. To facilitate locating UDBEs, the CUCP database breaks out DBEs by gender and ethnicity.

10. *Do local agencies count participation by DBEs that are owned by Hispanic Males and Subcontinent Asian Males—the two groups that were found not to have statistically significant disparity in the Study?*

Yes, but they are not counted towards the contract goals nor the Race Conscious portion of the local agencies' AADPLs. Participation by Hispanic Males and Subcontinent Asian Males is counted towards the Race Neutral portion of the local agencies' respective AADPLs.

11. *Are we reinstating the Good Faith Effort requirement in the procurement process for federal-aid contracts? Where can one find Good Faith Effort guidance?*

Yes. The Good Faith Effort requirement is being reinstated but is limited to UDBEs. Guidance may be found at Caltrans, Division of Local Assistance website under "Announcement" at:
<http://www.dot.ca.gov/hq/LocalPrograms/>

12. *Are contractors on federal-aid contracts required to substitute UDBEs with UDBEs or make a good faith effort to do so?*

Yes, contractors on federal-aid contracts are required to notify the local agency and document good faith efforts to replace the UDBE with another UDBE.

13. *Are the United States Forest Service (USFS) and the National Park Service (NPS) exempt from DBE requirements?*

Yes, the Federal Government has its own contracting regulations, the Federal Acquisition Regulations (FAR) that both USFS and NPS must follow. The FAR contains the requirements of the 8a Program