

EXHIBIT 9-B LOCAL AGENCY DBE ANNUAL SUBMITTAL FORM

TO: CALTRANS DISTRICT 6
District Local Assistance Engineer

The information for Exhibit 9-B presented herein is in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California Department of Transportation (Caltrans) Disadvantaged Business Enterprise (DBE) Program Plan.

The County of Fresno submits our annual 9-B information for the Federal Fiscal Year 2018 / 2019, beginning on October 1, 2018 and ending on September 30, 2019.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

Mohammad Alimi, Ph.D., P.E., Design Engineer for the Department of Public Works and Planning, 2220 Tulare Street, Fresno, CA 93721, Phone: (559) 600-4109, Fax: (559) 6004399, email: malimi@fresnocountyca.gov.

Planned Race-neutral Measures

The County of Fresno will implement race-neutral measures for the upcoming FFY 2018 / 2019 according to 49 CFR Part 26.51 and Section V of the California Department of Transportation Disadvantaged Business Enterprise Implementation Agreement for Local Agencies which includes arranging solicitations, times for the presentation of bids, quantities, specifications and delivery schedules in ways that facilitate DBE and other small business participation.

Prompt Pay

See Attachment A - Prompt Payment of Withheld Funds to Subcontractor.

Prompt Pay Enforcement Mechanism

See Attachment B - Prompt Pay Enforcement Mechanism.

ATTEST:

BERNICE E. SEIDEL
Clerk of the Board of Supervisors
County of Fresno, State of California

By [Signature] Deputy

[Signature]
Sal Quintero
Chairperson of the Board of Supervisors
of the County of Fresno

559-600-3000
Phone Number

9/11/18
(Date)

[Signature]
(Signature of Caltrans District Local Assistance Engineer)

10/3/18
(Date)

Distribution: (1) Original – DLAE
(2) Signed copy by the DLAE – Local Agency

(Attachment A)

**Prompt Payment of Withheld Funds to
Subcontractors**

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

- ☐ **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. 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 in 30 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. 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 30 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 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 noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Pay Enforcement Mechanism

The Prompt Pay Enforcement Mechanism conforms to the 2015 State Standard Specifications as well as all applicable federal regulations. The prime contractor shall pay any subcontractor not later than 7 days of receipt of each progress payment according to the contract special provisions. In a dispute involving a late or non-payment by the prime contractor, when notified, Department of Public Works and Planning (Department) will give written notice to the prime contractor and will withhold monies in retention from the next progress payment until resolution. The retention amounts in the special provisions allow up to \$10,000 or 125 percent of the untimely payment, whichever is greater.

The prime contractor is required to maintain records and documents of payment to all subcontractors, including DBEs for three years following the performance of the contract. These records are to be made available for inspection upon request. This reporting requirement extends to any certified DBE subcontractor. Payment to DBE subcontractors will be reviewed by the engineer to ensure the actual amount paid to DBE subcontractor equals or exceeds the dollar amounts stated in the schedule of DBE participation.

At the preconstruction conference with the contractor, the subcontractor's DBE work will be discussed in its entirety. The Engineer will compare the completed Subcontracting Request and the DBE Information Exhibit 15G form, provided in the Proposal portion of the specifications, submitted by the contractor. Discrepancies must be resolved and the changes are to be addressed during a substitution process at a later date. Substitutions will be subject to the Subletting and Subcontracting Fair Practices Act and require the contractor to list all of the subcontractors in excess of one-half of one percent of the contractor's total bid. No substitution will be allowed without the approval of the Department.

The Engineer will give the contractor a blank Exhibit 17-F, also provided in the Project Details portion of the specifications, for the first tier subcontractors and will notify them that the document will be required at the end of the project, for which payment can be withheld.

The Engineer will ensure that staff inspectors know what items of work each DBE is responsible for performing.

When a firm other than the listed DBE subcontractor is found performing the work, the Engineer will notify the contractor of the apparent discrepancies and potential loss of payment. If the contractor fails to adequately explain the discrepancy, payment for the work will be withheld. A letter will be sent to the contractor referencing the applicable specification violation and the withholding of payment.

When a DBE substitution is requested, the Department will request a letter from the contractor explaining the need for the substitution. If the Department agrees to the substitution, the engineer will notify the DBE subcontractor in writing regarding the proposed substitution. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort.