



**SAN BERNARDINO COUNTY
POLICY MANUAL**

No. 11-12

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EFFECTIVE DATE October 26, 2021

**POLICY: CIVIL RIGHTS, DISADVANTAGED BUSINESS
ENTERPRISE AND OTHER REQUIREMENTS ON
UNITED STATES DEPARTMENT OF TRANSPORTATION
ASSISTED PROJECTS**

APPROVED

CURT HAGMAN
Chairman, Board of Supervisors

POLICY STATEMENT AND PURPOSE

It is the policy of San Bernardino County (County) to comply with all applicable Civil Rights (including, but not limited to, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and Equal Employment Opportunity Contractor Compliance), Disadvantaged Business Enterprise, and other United States (U.S.) Department of Transportation and California Department of Transportation (Caltrans) requirements on federal-aid transportation projects.

DEPARTMENTS AFFECTED

This policy affects all County departments that receive, or assist departments that receive, federal-aid from the U.S. Department of Transportation, including, but not limited to, the Department of Public Works and the Department of Airports.

POLICY AMPLIFICATION

The County regularly applies for and receives federal-aid on transportation projects. The County shall administer those funds in conformity with all applicable federal and state requirements.

The Board of Supervisors (Board) also adopts the following policies and procedures:

- *Title VI of the Civil Rights Act.*
 - Title VI Nondiscrimination Policy Statement.

The County, under Title VI of the Civil Rights Act of 1964 and related federal and state statutes, regulations, and Executive Orders, as well as County Policy Numbers 07-01, 07-08, and 11-12, ensures that no person shall, on the grounds of race, color, national origin, or other "Protected Classes" as that term is defined in County Policy Number 07-01, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity it administers. The County's Nondiscrimination Policy Statement is identified in County Policy Number 07-01.

Anyone who believes they have been the subject of, becomes aware of, or observed discrimination, harassment, retaliation or other prohibited conduct associated with a federal-aid transportation project, may report or make a complaint to the County or the U.S. Department of Transportation. For more information on how to file a Title VI complaint, please contact:

San Bernardino County Department of Public Works
825 East Third Street
San Bernardino, California 92415
Telephone (888)818-8988 (voice) or 7-1-1 (TTY Relay Service)

Or visit the following County website and click the "Title VI" button:

<https://cms.sbcounty.gov/dpw/Home.aspx>

Additionally, if you need this information in an alternate format, such as in Braille or in a language other than English, or any other assistive services, please contact the San Bernardino County Department of Public Works at the address or phone number noted above.

For more information on how to file a complaint with the U.S. Department of Transportation, provided below is the contact information:

Departmental Office of Civil Rights
1200 New Jersey Ave, S.E.
Washington, DC 20590

Contact phone numbers may be found on the following U.S. Department of Transportation website:

<https://www.transportation.gov/civil-rights/about-docr/directory>

Or visit the following U.S. Department of Transportation website:

<https://www.transportation.gov/civil-rights/complaint-resolution>

- Title VI Nondiscrimination Policy Statement Signed by the County's Chief Executive Officer (CEO). Pursuant to Title VI, the above-referenced Title VI Nondiscrimination Policy Statement shall be signed by the CEO and shall be disseminated to the public via such methods as posting in public areas and/or on the County's website. The CEO is authorized to make updates to the contact information or any other clerical changes in the Title VI Nondiscrimination Policy Statement.
- Applicability. These nondiscrimination provisions apply to all programs and activities that receive federal financial assistance from the U.S. Department of Transportation.
- Title VI Complaint Procedures. In the event of a Title VI complaint alleging the County or its contractors violated any of the civil rights laws, including, but not limited to, discrimination on the basis of race, color, national origin, or other "Protected Classes" as that term is defined in County Policy Number 07-01, such complaint may be filed with, or shall be forwarded to the San Bernardino County Department of Public Works. A Title VI complaint form may be found by utilizing the Department of Public Works contact information identified in the Title VI Policy Statement.

For projects that are subject to the Caltrans Local Assistance Procedures Manual (LAPM) requirements, the County and the complainant shall follow the complaint procedures identified in Chapter 9 of the Caltrans LAPM. The County's Department of Public Works shall forward copies of all Title VI complaints to the Caltrans Equal Employment Opportunity Office in the applicable Caltrans District for review and disposition.

- Title VI Coordinator. The County's Title VI Coordinator is responsible for initiating and monitoring Title VI activities and preparing required reports. The County's Deputy Director for Transportation, Department of Public Works is designated as the County's Title VI Coordinator. Identification of the County's Title VI Coordinator shall also be disseminated to the public via such methods as posting in public areas or on the County's website.
- Title VI Training. The County shall provide Title VI training every two years to the following staff that work on projects that are subject to Title VI requirements: managers, supervisors, and staff with frequent public contact. The Title VI Coordinator shall be responsible for Title VI training.
- Limited English Proficiency. The County is required on federal-aid transportation projects to ensure programs and activities normally provided in English are accessible to Limited English Proficiency (LEP) persons. The Title VI Coordinator shall perform an annual assessment to determine if modifications are needed for County programs and activities

that are subject to Title VI requirements to ensure meaningful access by LEP persons, culminating in the development of a language access plan.

- Dissemination of Title VI Information. The Department of Public Works shall develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English. Alternative formats must be offered and made available at no cost to the requester, where applicable. (Title 23 of the Code of Federal Regulations (CFR), § 200.9(b)(12).) The purpose of the information shall be to communicate information about the public's rights under Title VI of the Civil Rights Act of 1964.
- Caltrans and U.S. Department of Transportation Requirements. Departments shall comply with all applicable Caltrans and U.S. Department of Transportation requirements.
- Department Policies and Procedures. Departments may adopt plans, policies and procedures consistent with this policy. The Department of Public Works shall develop procedures for the collection of statistical data of participants in, and beneficiaries of federally funded roadway projects. The Department of Public Works will also analyze the data collected to determine the effectiveness of outreach methods to ensure that all groups are included during the decision-making process and are given an opportunity to voice their opinions or concerns. (23 CFR § 200.9(b)(4).)
- Accomplishments and Goal Report. The Department of Public Works shall prepare on an annual basis a Title VI Annual Accomplishments and Goals Report. The report shall list the accomplishments of the last year, and the goals for the following year. (23 CFR § 200.9(b)(10).)
- *Americans with Disabilities Act (ADA) Implementation.*
 - See County Policy Numbers 07-13 and 07-13SP.
 - ADA Coordinator/Liaison Officer. The County's Director of the Department of Risk Management (Primary Public Access ADA Coordinator/Liaison Officer) coordinates the efforts of the County to comply with Title II of the ADA (28 CFR Part 35), including investigation of complaints. The County's Department of Public Works Engineering Manager for the Transportation Planning Division shall be the alternate Public Access ADA Coordinator/Liaison Officer for the Department of Public Works' efforts to comply with Title II of the ADA.
 - Grievance Procedures. The County has adopted grievance procedures to provide for the prompt and equitable resolution of complaints arising under Title II of the ADA. The procedures may be found on the County's website at <http://www.sbcounty.gov/main/Pages/ADANotice.aspx>.
 - ADA Annual Certification Form. The County's Director of the Department of Risk Management or the County's Department of Public Works Engineering Manager for the Transportation Planning Division shall have the authority to complete and sign Caltrans Exhibit 9-C "Local Agency ADA Annual Certification Form" by June 30th of each year for the following Federal Fiscal Year (October 1st to September 30th).
- *Equal Employment Opportunity (EEO) Contractor Compliance Liaison Officer.*

The officer identified in County Policy Number 07-08 is designated as the County's EEO Liaison Officer that coordinates the efforts of the County to comply with the equal employment opportunity laws and regulations, including those found in Title 23 of the United States Code, section 140(a) and Title 23 CFR Part 230.

- *Disadvantaged Business Enterprise (DBE).*

- According to Chapter 9 of the Caltrans LAPM:

The DBE Program is intended to ensure a level playing field and foster equal opportunity in federal-aid contracts. As a result, Caltrans periodically conducts studies that examine the availability, disparity, and discrimination of disadvantaged businesses in the transportation construction and engineering industry in California. Past studies have determined that discrimination continues to exist in the transportation contracting industry. When establishing the overall DBE goal, Caltrans must include the level of DBE participation that local agencies could contribute. This will include an assessment of the subcontracting opportunities for specific items of work and the DBE availability for specific items of work. In other words, that level of subcontracting opportunities that DBEs could reasonably be expected to compete for on a contract. (Chapter 9 of the Caltrans LAPM, Section 9.5.)

- A “DBE” is defined in 49 CFR § 26.5.

- A “small business concern” is:

with respect to firms seeking to participate as DBEs in federal-aid contracts, a Small Business Concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b). (Chapter 9 of the Caltrans LAPM, Section 9.5.)

- On projects subject to the Caltrans DBE Program, it is the policy of the County to encourage the participation of DBEs in County transportation projects which receive federal-aid by complying with all applicable requirements in Title 49 CFR Part 26 and Chapter 9 of the Caltrans LAPM. On Department of Airports projects that receive federal-aid and are subject to Title 49 CFR Part 26, in addition to any applicable Caltrans requirements, the CEO shall have the authority to approve, execute, and amend from time-to-time a “County Airports Disadvantaged Business Enterprise (DBE) Plan” (DBE Plan) that is consistent with the terms of Title 49 CFR Part 26 and County policies. Upon CEO approval and execution of the DBE Plan or any amendments to the DBE Plan, the Department of Airports shall transmit the Plan to the County’s DBE Liaison Officer and comply with the Plan.
- The Engineering Manager for the Contracts Division of the Department of Public Works is designated as the County’s DBE Liaison Officer. The DBE Liaison Officer shall be accountable to the Director of Public Works and the CEO to administer the County’s DBE Program. The DBE Liaison Officer shall be responsible for the duties as described in Chapter 9 of the Caltrans LAPM, including, but not limited to, the duties described in the DBE Implementation Agreement for Local Agencies. Ultimately, the DBE Liaison Officer shall be responsible for implementing all aspects of the County’s DBE program and ensuring that the departments are fully and properly advised concerning DBE Program Plan matters. The name of the DBE Liaison Officer shall be reported to Caltrans when the County completes Caltrans Exhibit 9-B “Local Agency DBE Annual Submittal Form.”
- Delegation of Board Authority to County’s DBE Liaison Officer. The Board approves Caltrans Exhibit 9-A “DBE Implementation Agreement for Local Agencies” in Chapter 9 of the Caltrans LAPM, and authorizes the County’s DBE Liaison Officer to complete, sign, and submit to Caltrans the Caltrans Exhibit 9-A, or any nonsubstantive amendments to said agreement, to formally acknowledge the County’s commitment to implement the

Caltrans DBE Program and to comply with all of the applicable Caltrans LAPM responsibilities. The County's DBE Liaison Officer is also authorized to complete, sign, and submit to Caltrans the Caltrans Exhibit 9-B "Local Agency DBE Annual Submittal Form" in Chapter 9 of the Caltrans LAPM, which provides information for the upcoming federal fiscal year.

- DBE Goals.
 - On federal-aid projects subject to the Caltrans LAPM, the County will establish DBE contract goals as provided in Chapter 9 of the Caltrans LAPM. A DBE contract goal is a percentage of the total contract amount that is expected to be performed by certified DBE firms. As provided in Section 9.7 of the Caltrans LAPM, in some cases the contract goal may be zero or no contract goal may be warranted. The County shall structure its contracts and cost estimates by tasks to provide opportunities for DBE participation in the Preliminary Engineering, Environmental, Final Design, Right-of-Way, and Construction phases of the project and these opportunities include work as lead consultants, prime contractors, sub-consultants, subcontractors, suppliers, vendors and truckers.
 - For Department of Airports federal-aid projects, the Department of Airports shall identify overall DBE goal(s) and methodology that complies with all applicable federal requirements and County policies, which goal(s) and methodology shall be part of the CEO approved and executed County Airports DBE Plan.
- Contract Clauses and Delegation of Authority to the Directors of the Department of Public Works and the Department of Airports. The County will include all of the required contract clauses in its federal-aid contracts, including, but not limited to, provisions that address contract assurances, prompt payment provisions, good faith efforts, administrative review and evaluation of good faith efforts, and substitutions. On projects subject to the Caltrans DBE Program, the County adopts the Caltrans Procedures for Good Faith Efforts (which procedures are currently found in Caltrans LAPM Exhibit 9-G, and which may be revised by Caltrans in the future) as the County's procedures on good faith efforts. On Department of Airports' projects that receive federal-aid and are subject to Title 49 CFR Part 26, but are not subject to the Caltrans DBE Program, the Department of Airports shall comply with the procedures for Good Faith Efforts in the CEO approved DBE Plan. On an annual basis, the Director of the Department of Public Works and the Director of the Department of Airports will require one of the three methods identified in Title 49 CFR Section 26.29 to 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. The choice made by the Director of the Department of Public Works will be reported to Caltrans when the County's DBE Liaison Officer completes the Caltrans LAPM Exhibit 9-B "Local Agency DBE Annual Submittal Form" (Chapter 9 of the Caltrans LAPM). The County will also include in each prime contract a provision for appropriate sanctions that will be involved if the prime contractor fails to fulfill the DBE commitments made at the time of the execution of the contract. This may include a provision that denies payment to the prime contractor for the portion of the contract that was committed at the time of contract execution to be performed by a DBE subcontractor but was completed by the prime contractor or a substitute non-DBE subcontractor.
- Reconsideration Hearings.
 - When the County establishes a DBE contract goal for the project and determines that an apparent successful bidder has failed to meet the DBE contract goal, the County will then review whether the apparent successful bidder complied with the Good Faith Efforts requirements before awarding the contract. If the County

determines that the apparent successful bidder did not satisfy the Good Faith Efforts requirements, the apparent successful bidder has the opportunity for administrative reconsideration in accordance with Title 49 CFR Section 26.53. On projects subject to the Caltrans DBE Program, the County adopts the Caltrans procedures for Reconsideration Hearings (which procedures are currently found in Caltrans LAPM Exhibit 9-H, and which may be revised by Caltrans in the future) as the County's procedures on reconsideration hearings except as follows. Instead of a three-person reconsideration panel, there shall only be one County Reconsideration Official. On Department of Airports projects that receive federal-aid and are subject to Title 49 CFR Part 26, but are not subject to the Caltrans DBE Program, the Department of Airports shall comply with the procedures for Reconsideration Hearings in the CEO approved DBE Plan. As provided in Caltrans LAPM Exhibit 9-H and the CEO approved DBE Plan, all decisions of the Reconsideration Official shall be final.

- The County's Reconsideration Official shall be the Deputy Director of the Department of Public Works, Solid Waste Management Division.
- Monitoring, Enforcement, and Reporting. The County's DBE Liaison Officer shall ensure appropriate department monitoring and enforcement mechanisms are used to make sure work committed to DBEs in the contract is actually performed by the DBEs to which the work was committed. The mechanisms must include a written certification by the department that the department or its agent reviewed the contracting records and monitored work sites for this purpose. Each department will also ensure all applicable and required DBE reports and documentation are provided to the appropriate federal or state agency.

In the event of a conflict between this policy and the applicable federal or state laws/regulations or applicable Caltrans LAPM provisions, the applicable federal or state laws/regulations or LAPM provisions shall control. In the event of a conflict between this policy and other policies of the County, this policy shall control.

LEAD DEPARTMENT

Department of Public Works

APPROVAL HISTORY

Adopted: April 10, 2001 (Item No. 55), Amended and Restated on October 26, 2021.

REVIEW DATE

July 1, 2024