
100.00 GENERAL ADMINISTRATION

100.30 CONTRACT ADMINISTRATION

Intergovernmental Agreements (IGAs)

The CA Agency must enter into an intergovernmental agreement (IGA) with ADOT when:

- A project type or activity is not covered by the CA Manual, such as Design Build or CMAR
- A project impacts an ADOT facility
- A project exceeds \$10 million in federal-aid funding total project costs and is authorized as Advance Construction (This also requires a tri-party agreement with the Metropolitan Planning Organization [MPO].)
- A project is funded with either Highway Project Advancement Notes (HPAN) or Transportation Project Advancement Notes (TPAN)
- A project is funded by Railroad Section 130 funds
- Using an ADOT-administered on-call contract, or
- Maintenance activities intersect with ADOT's ROW
- Deemed applicable

Note: If a CA agency project impacts another CA agency facility requiring an IGA, then the CA agency must make the IGA available to ADOT by request.

When ADOT receives the CA Agency's executed IGA, federal-aid funds may be authorized.

Claims

The CA Agency must process any dispute or claim not involving a question of law during the contract performance in compliance with 23 C.F.R. § 635.124(b) and 23 C.F.R. Part 140, Subpart E. The CA Agency must provide the ADOT PM and ADOT LPA Section written notice immediately of any contract claim or issue under dispute and must keep ADOT informed throughout the settlement process. The CA Agency must bear the costs unless approved for reimbursement or partial reimbursement by ADOT. The CA Agency must notify the ADOT PM of proposed settlement offers before sending the offer to the contractor. The CA Agency must settle all claims before final acceptance.

The CA Agency must report all active claims on CA-administered FAHP projects to the ADOT PM, so the claims can be included in the quarterly claims report that ADOT submits to FHWA. If an extension is required, then see Period of Performance section for PPED extension form information.

Termination of a Contract

The CA Agency must comply with 23 C.F.R. § 635.125. In accordance with 23 C.F.R. § 635.125(a), the CA Agency must ensure all contracts contain suitable contract provisions for termination by the CA Agency, including the manner by which the termination will be effective and basis for settlement, conditions where the contract may be terminated for default, and conditions where the contract may be terminated due to circumstances beyond the contractor's control.

Before terminating a federal-aid contract, the CA Agency must contact the ADOT PM to receive ADOT concurrence. ADOT will notify FHWA when a contract is to be terminated and determine whether contract termination costs, including final settlement, are eligible for federal reimbursement.

Equal Employment Opportunity

In accordance with 23 C.F.R. Part 230, Subpart A, ADOT BECO will conduct periodic EEO compliance reviews on CA-administered FAHP projects. The CA Agency must coordinate with ADOT BECO at every stage of the review process to ensure the contractor complies with 23 C.F.R. Part 230.

In accordance with 23 U.S.C. § 140(a) and 23 C.F.R. Part 230, Subpart A, the CA Agency must submit a Federal-Aid Highway Construction Contractors Annual EEO Report (Form FHWA-1391) for each active contractor or subcontractor, regardless of tier level, with a contract or subcontract of \$10,000 or more. The CA Agency must submit the report to ADOT BECO every year by August 15.

Disadvantaged Business Enterprise

49 C.F.R. Part 26 removes barriers to participation and creates a level playing field for the participation of DBEs. This federal regulation provides the requirements for how to implement the Federal DBE Program, a program of the USDOT. ADOT developed and implemented an *ADOT FHWA DBE Program Plan*. The CA Agency must adhere to this plan to be eligible for federal reimbursement.

The federal DBE Program is designed to:

- Ensure nondiscrimination in the award and administration of USDOT-assisted contracts
- Remedy past and current discrimination against disadvantaged business enterprises
- Create a "level playing field" in which those firms can compete fairly for USDOT-funded contracts

Before project advertisement, the CA Agency must submit the DBE Goal Setting Worksheet to ADOT BECO to obtain a DBE contract goal. The CA Agency must ensure the advertisement and contract contain the required DBE goal percentage and DBE contract language for engineering and design-related services or the ADOT DBE Special Provisions (EPRISE) for construction projects as mandated by the *ADOT FHWA DBE Program Plan*. Only BECO can set the DBE goal for a FAHP project. Inclusion of a local goal will cause the project to be ineligible for federal reimbursement.

In accordance with the *ADOT FHWA DBE Program Plan*, when there is a DBE contract goal, BECO will determine whether a bidder/offeror has met the DBE goal or has documented sufficient good faith effort to be considered for the award. The CA Agency must provide the ADOT PM and BECO written notice immediately following bid opening if the apparent low bidder indicates on the DBE Assurance Form that it cannot meet the DBE goal.

Following bid opening, the CA Agency must submit to BECO the DBE Assurance Form and DBE intended participation affidavits from the apparent low bidder, bidders' list from all offerors, and if applicable, good faith effort documentation or any other documents required by the *ADOT FHWA DBE Program Plan*. The CA Agency cannot award a contract without BECO concurrence.

For contracts with a DBE goal, the contractor's DBE commitment made at the time of bid is a condition of contract award. The CA Agency must notify BECO as soon as the CA Agency is aware of any potential issues that may affect DBE commitments made at time of award. If the contractor and/or DBE is unable or unwilling to fulfill the commitment, in compliance with 49 C.F.R. Part 26 for the duration of the contract, the CA Agency must receive written concurrence from BECO before a committed DBE's termination, substitution, or reduction of work.

Failure to carry out the DBE Program requirements can result in withdrawal of federal funding from the FAHP project. When ADOT notifies the CA Agency of its failure to carry out the DBE Plan, ADOT will impose sanctions, which may include measures that affect CA status and the CA Agency's ability to receive federal funding.

On the Job Training

ADOT BECO will assess an OJT goal at the time of the DBE goal assessment in accordance with the ADOT OJT Program requirements. The CA Agency must include the OJT Special Provisions provided by ADOT BECO in contracts with OJT goals and monitor those contracts to ensure contractor compliance with OJT provisions.