

# Civil Rights Academy

Disadvantaged Business Enterprise (DBE) Program

Training for Local Agency administration  
via Webex



## Division of Local Assistance (DLA)

### Civil Rights Academy: Module 1

February 1<sup>st</sup>, 2<sup>nd</sup>, 2023

9 :00am - 11:45am

Day 1 - February 1 <sup>st</sup>		
Time	Topic	Presenter
9:00 AM	Welcome & Introductions	
9:10 AM	DBE procedures	Wenyi Long, Sr DBE Engineer, Division of Local Assistance
10:00 AM	<b>Break (10 minutes)</b>	
10:10 AM	DBE Program: Monitoring and Enforcement	Taelor Stamm, Compliance Branch Manager, Office of Civil Rights
10:35 AM	DBE Forms: Federally Funded Contracts	Cynthia Shipley, D3 Local Grant Manager, Division of Local Assistance
10:50 AM	DLA Reports: SBC and FHWA	Hau Doan, Sr DBE Engineer, Division of Local Assistance
11:05 AM	<b>Break (5 minutes)</b>	
11:10 AM	DBE Program: Construction Contract	Girmay Beyene, Construction Oversight Program Manager, Division of Local Assistance
11:30 AM	DBE Program: Consultant Contract	Bing Luu, A&E Oversight Program Manager, Division of Local Assistance
11:45 AM	<b>Day 1: Closing</b>	



# Division of Local Assistance (DLA)

## Civil Rights Academy: Module 1

February 1<sup>st</sup>, 2<sup>nd</sup>, 2023

9 :00 am - 11:30 am

Day 2 - February 2 <sup>nd</sup>		
Time	Topic	Presenter
9:00 AM	Welcome & Introductions	
9:10 AM	Title VI	Daniel Burke, Program Review & Outreach Branch Manager
10:10 AM	Break (10 minutes)	
10:20 AM	ADA	Daniel Burke, Program Review & Outreach Branch Manager
11:30 AM	Day 2: Closing	

Day 1



Division of Local Assistance

# Disadvantaged Business Enterprise (DBE) Procedures

Wenyi Long

Senior DBE Oversight Engineer

Caltrans Division of Local Assistance

# Caltrans Division of Local Assistance Contacts

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# Content

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- DBE Program Objectives
- DLA DBE Procedures:
  1. Pre-award
  2. Post-Award
  3. Non-Compliance and Penalty



# DBE Program Objectives

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- Ensure non-discrimination in award & administration of federally funded projects.
- Create a level playing field in which DBE Firms can compete fairly.
- Encourage more DBE firms to participate in federally funded projects

# DLA DBE Procedures

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## **Pre-Award**

- 1) Goal Setting
- 2) Good Faith Efforts (GFE)
- 3) Reconsideration Hearing
- 4) Required Contract Language

# Goal Setting

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## **Policy:**

All Federal-aid contracts that have subcontracting opportunities must have a DBE goal set. This includes construction, consultant (A&E and non-A&E) contracts, and master on-call consultant contracts.

(Zero goals or no goals require justification)

# Goal Setting

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## **When to set the DBE Goal?**

When the cost estimate for the project has been finalized:

- For a consultant contract: the scope of work along with cost estimate for the various professional services is complete.
- For a construction contract: the approximate, lump sum, pay quantities and associated costs for each item of work is complete.

# Goal Setting

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A contract DBE goal is set based on the potential subcontract opportunities, location of work, and the availability of ready, willing and able DBE firms.

- 1) Classify work (subcontractor, trucking, material/supply)
- 2) Determine work category codes for subcontractor work items
- 3) Search the California Unified Certification Program database (CUCP) <https://caltrans.dbesystem.com/>
- 4) Apply DBE factors to items of work (100%, 10%, 12%)
- 5) Calculate a soft goal
- 6) Apply 80% factor
- 7) Round to nearest whole percent

# Goal Setting

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To calculate the Contract DBE goal:

- Use Exhibit 9-D: DBE Contract Goal Methodology
- In Excel format (No PDF format)

# Goal Setting

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Submitting the completed Exhibit 9-D to Caltrans for review:

- For consultant contract  $\leq$  \$500,000, or
- For construction contract  $\leq$  \$2,000,000
  - Submit the exhibit 9-D in excel format to DLAE, district will review and confirm the DBE goal calculation.
- For consultant contract  $>$  \$500,000, or
- For construction contract  $>$  \$2,000,000
  - Submit the exhibit 9-D in excel format to DLAE, and the DLAE will forward the 9-D to DBE Inbox: [DBEgoal.GFE@dot.ca.gov](mailto:DBEgoal.GFE@dot.ca.gov).
  - OCR will review, approve or adjust the DBE goal for the contract within 15 business days.

# Good Faith Efforts

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## **Policy:**

Any contract that has a DBE goal must be awarded to a responsive consultant/bidder that meets the DBE goal or makes GFE to meet the goal.

(LAPM Chapter 9, Section 9.8)



# Good Faith Efforts

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- The consultant/bidder took all *necessary and reasonable steps* to achieve a DBE goal that by their *scope, intensity, and appropriateness to the objective* could reasonably be expected to obtain sufficient DBE participation.
- Agencies consider the *quality, quantity, and intensity* of the different kinds of efforts.
- Efforts should be those that one could reasonably expect a bidder to take if the bidder were *actively and aggressively* trying to meet the goal.

# Good Faith Efforts

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## GFE package:

The local agency must obtain, complete, and review all the following documentation prior to determining a GFE:

### For Consultant Contract:

Exhibit 10-O1: Consultant Proposal DBE Commitment

Exhibit 15-H: Proposer/Bidder Good Faith Efforts

Exhibit 9-E: Local Agency Good Faith Efforts Review

### For Construction Contract:

A bid summary such as Exhibit 15-D: Bid Tabulation Summary Sheet

All bidder's Exhibits 15-G: Construction Contract DBE Commitment

All bidder's Exhibit 15-H: Proposer/Bidder Good Faith Efforts

Exhibit 9-E: Local Agency Good Faith Efforts Review

# Good Faith Efforts

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When do Bidders/Offerors need to submit those forms?

- Exhibits 15-G

Bidders need to submit the 15-G no later than 4 pm on the 5<sup>th</sup> day after bid opening.

- Exhibit 10-O1

Submit the 10-O1 with the consultant's proposal package.

- Exhibit 15-H

Submit the 15-H no later than 4 pm on the 5<sup>th</sup> day after bid opening.

# Good Faith Efforts

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## Who reviews the GFE Package?

Local Agency is responsible to review the GFE package

- Consultant contract  $\leq$  \$500,000, or
- Construction contract  $\leq$  \$2,000,000

DLAE will submit the GFE package to inbox:  
[DBEgoal.gfe@dot.ca.gov](mailto:DBEgoal.gfe@dot.ca.gov)

- Consultant contract  $>$  \$500,000, or
- Construction contract  $>$  \$2,000,000

OCR review complete within 15 business days

# Good Faith Efforts

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What happen if OCR's GFE Review Conclusion differs from the Local Agency's Original Evaluation?

- If Caltrans determines the GFE was inadequate, the local agency will take Caltrans feedback on GFE into consideration and re-evaluate the GFE. After the reevaluation:
- If the local agency still thinks the GFE is adequate, they can award the contract or start the negotiation process.
- If the local agency concludes that the GFE is inadequate, they must invite the low bidder or the most qualified consultant to an Administrative Reconsideration Hearing.

# Administrative Reconsideration Hearing

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If local agency determines that the apparent successful bidder has failed to meet the GFEs requirements, the local agency, before awarding the contract, or negotiating, must provide the apparent successful bidder/most qualified consultant, an opportunity for an administrative reconsideration hearing in accordance with 49 CFR 26.53.

Reconsideration Panel:

- (1) Three People (Recommendation, not Regulation)
  - (2) Did not participate in the original GFE evaluation
- (Exhibit 9-H: Sample Procedure for Reconsideration Hearing)

The conclusion of the Reconsideration is final. The conclusion is not appealable to the local agency, Caltrans and FHWA.

# Required Contract Language

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## 1. Contract Assurance

DBE regulations require the following contract assurance statement in every federal-aid contract and subcontract:

- The contractor or subcontractor must not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor must carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract, or such other remedy as recipient deems appropriate.

LAPM Chapter 9:  
Exhibit 12-G – For Construction Contract  
Exhibit 10-R – For Consultant Contract

# Required Contract Language

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## 2. Prompt Progress Payment to Subcontractor/Subconsultant

Section 7108.5 of the California Business and Professions Code (CBPC) requires a prime contractor or subcontractor to pay any subcontractor not later than **seven (7) days** after receipt of each progress payment, unless otherwise agreed to in writing.

Section 3321 of the California Civil Code (CCC) requires prime design professionals (prime consultants directly in contract with a public agency) to pay any subconsultant not later than **fifteen (15) days** after receipt of each progress payment.

LAPM Chapter 9:  
Exhibit 12-G – For Construction Contract  
Exhibit 10-R – For Consultant Contract



# Required Contract Language

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## 3. 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:

### **Method 1:**

- The local agency may decline to hold retainage from prime contractors
- Prime contractors and subcontractors are prohibited from holding retainage from subcontractors.

LAPM Chapter 9:  
Exhibit 12-G – For Construction Contract  
Exhibit 10-R – For Consultant Contract

# Required Contract Language

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Prompt Payment of retainage

## Method 2:

- The local agency may decline to hold retainage from prime contractors
- Prime contractor and subcontractors are allowed to hold retainage

Include language to obligate the prime contractors to make prompt and full payment of any retainage within the following timeframes after the subcontractor's work is satisfactorily completed:

- For construction subcontracts, retainage must be paid not later than **seven (7)** days unless otherwise agreed to in writing
- For consultant contracts, retainage must be paid not later than **fifteen (15)** days unless otherwise agreed to in writing

LAPM Chapter 9:

Exhibit 12-G – For Construction Contract

Exhibit 10-R – For Consultant Contract

# Required Contract Language

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Prompt Payment of retainage

## Method 3:

- The local agency may hold retainage from the prime contractor
- Prime contractor can hold retainage from subcontractor

Provide for prompt and regular incremental acceptances of portions of the contract, as determined by the agency, pay retainage to the prime contractor based on the acceptances and include a contract clause obligating the prime contractor and subcontractors to pay all retainage owed to all subcontractors within the following timeframes after the subcontractor's work is satisfactorily completed:

- For construction subcontracts, retainage must be paid not later than **seven (7)** days of receipt unless otherwise agreed
- For consultant contracts, retainage must be paid not later than **fifteen (15)** days after receipt of final retention

# Required Contract Language

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## Monitoring and Enforcement Mechanism for Prompt Payment

Per 49 CFR 26.29(d), and LAPM Ch. 9, section 9.6, the Agency is required to stipulate the monitoring and enforcement mechanisms in the contract to ensure that all subcontractors, including DBEs, are promptly paid. These mechanisms may include:

- Appropriate penalties for failure to comply with the terms and conditions of the contract.
- The mechanisms may also provide that any delay or postponement of payment among the parties may take place only for good cause with the Agency's prior written approval.

LAPM Chapter 9:  
Exhibit 12-G – For Construction Contract  
Exhibit 10-R – For Consultant Contract

# Required Contract Language

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## 4. Termination and Replacement of DBE Subcontractors

- The prime contractor (consultant) shall utilize the original specific DBEs listed to perform the work and supply the materials unless the contractor (consultant) obtains the Agency's written consent.
- The prime contractor (consultant) shall not terminate or replace a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without prior written authorization from the Agency.
- If a listed DBE is terminated or replaced, the prime contractor must make good faith efforts to find another DBE to replace for the original DBE. The replacing DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE commitment.

LAPM Chapter 9:

Exhibit 12-G – For Construction Contract

Exhibit 10-R – For Consultant Contract

# Required Contract Language

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## Monitoring and Enforcement for DBE Terminations and Replacements

Per 49 CFR 26.53(h), LAPM Ch. 9, section 9.8, the Local Agency shall include administrative remedies in each contract in case the prime contractor or subcontractor terminate or substitute a DBE firm without the Local Agency's written approval. The remedies must include, but are not limited to:

- The contractor/consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 15-G, or Exhibit 10-O2

LAPM Chapter 9:  
Exhibit 12-G – For Construction Contract  
Exhibit 10-R – For Consultant Contract

# Required Contract Language

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## 5. Commitment and Utilization

The Local Agency's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments match DBE utilization

The Agency shall request the prime contractor to:

- Provide written confirmation from each DBE that the DBE is participating the contract.
  - For construction contract, using LAPM 9-I or equivalent form, and quote
  - For consultant contract, any type of written confirmation
- Notify the RE or Inspector of any changes to its anticipated DBE participation

LAPM Chapter 9:  
Exhibit 12-G – For Construction Contract  
Exhibit 10-R – For Consultant Contract

# Required Contract Language

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The Agency shall request the prime contractor to:

- Provide this notification before starting the affected work
- Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subcontractor
  - Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business

For more required contract language for the Commitments and Utilization, please see Exhibit 12-G and Exhibit 10-R.

LAPM Chapter 9:  
Exhibit 12-G – For Construction Contract  
Exhibit 10-R – For Consultant Contract



# Required Contract Language

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## 6. DBE Running Tally of Attainments

After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10<sup>th</sup> of the following month, the prime contractor/consultant shall complete and email the Exhibit 9-F to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency

LAPM Chapter 9:  
Exhibit 12-G – For Construction Contract  
Exhibit 10-R – For Consultant Contract

# Required Contract Language

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## 7. Commercially Useful Function (CUF)

- DBEs must perform a commercially useful function when performing work or supplying materials listed on the DBE commitment form
- The DBE value of work will only count toward the DBE commitment if the DBE performs a CUF
- If a DBE does not perform at least 30% of its contract with its own force, it will be considered that the DBE is not performing the CUF
- For the part of work that CUF is not performed, the LPA may deny the payment

LAPM Chapter 9:  
Exhibit 12-G – For Construction Contract  
Exhibit 10-R – For Consultant Contract

# DLA DBE Procedures

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## Post-Award

- 1) Commercially Useful Function
- 2) Termination and Replacement of DBE Firms
- 3) Prompt Payment

# Commercially Useful Function

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1. DBEs must perform commercially useful function (CUF) when performing work or supplying materials listed on the DBE commitment form
2. The prime contractor must perform CUF evaluation for each DBE working on federal aid contract, with or without DBE goal
3. The prime contractor must perform a CUF at the beginning of the DBE's work and periodically continue to monitor the performance of CUF for the duration of the project
4. Use the form LAPM 9-J:DBE Commercially Useful Function Evaluation, to perform the CUF evaluation
5. LPAs will verify DBE's CUF by reviewing the 9-J.

# Termination and Replacement of DBE Firms

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1. A prime contractor cannot terminate or perform any work of a DBE listed on Exhibit 15-G, neither can it substitute any work of a DBE without the written consent of the LPA prior to any replacement taking place
2. If a prime contractor receives written permission from the LPA to terminate a DBE, the prime contractor must then make adequate GFEs for any necessary replacement of a DBE subcontractor to the extent needed to meet the DBE commitment

# Termination of a DBE

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To terminate a DBE with justifiable reasons, the following procedures must be followed:

1. Contractor must send a written notice to the DBE, simultaneously send a copy of this notice to the LPA. Request the DBE provide any response within 5 business days to both the contractor and LPA
2. If the DBE does not respond within 5 business days, the contractor may move forward with the request as if the DBE had agreed
3. Submit the DBE termination request by written letter to LPA and include reasons, written notice to DBE and DBE's response
4. LPA must respond in writing within 5 days

# Replacement of a DBE

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After receiving the LPA's written authorization of DBE termination request, the contractor must obtain the LPA's written agreement for DBE replacement.

The following procedures must be followed to request authorization to replace a DBE firm:

1. Submit a request to replace a DBE with other forces or material sources in writing to LPA
2. If contractor has not identified a DBE replacement firm, submit documentation of GFEs to use DBE replacement firms within 7 days of LPA's authorization to terminate the DBE.

# Prompt Payment

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- Progress Payment -- Contractor or subcontractor must pay their subcontractor within 7 days after receipt of each progress payment.
- Withheld Funds to subcontractors – Retainage must be paid within 7 days of receipt
- LPA, as the implementing agency, is responsible to monitor and ensure the Prompt Payment is made by contractors and subcontractors
- If contractor fails to promptly pay DBE firms or other subcontractors within 7 days of receiving a progress payment relating to that subcontractor's work notify LPA and take a performance failure withhold until corrected.



# DLA DBE Procedures

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## 3. Non-Compliance and Penalty

From time to time, the following errors are seen:

- Advertise and award a contract without DBE goal
- Advertise and award a contract without evaluating GFE
- Advertise and award a contract without sending DBE goal calculation or GFE package to HQ for review
  - Those procedural errors could cause a local agency to lose the Federal funds.

# Non-Compliance and Penalty

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- Not perform Commercially Useful Function
  - This violation will cause the work performed by DBE firm not be counted towards DBE credit, and the LPA may deny the payment.
- Terminate and Replace a DBE firm without LPA's prior written approval
  - Without the LPA's prior written approval, the work that is committed for original DBE but performed by any other firms will not be entitled for payment.
- Not pay DBE firms promptly
- If contractor fail to promptly pay its sub, the payment to the contractor will be withhold and penalties will accrue until the violation is corrected.

**End of Presentation**

# DLA DBE Procedures Quiz



# True or False Question

For a construction contract of \$2 million, if a low bidder does not meet the goal, the GFE package must be sent to [DBEgoal.gfe@dot.ca.gov](mailto:DBEgoal.gfe@dot.ca.gov) for OCR to review.

True

False

# Answer:

For a construction contract of \$2 million, if a low bidder does not meet the goal, the GFE package must be sent to [DBEgoal.gfe@dot.ca.gov](mailto:DBEgoal.gfe@dot.ca.gov) for OCR to review.

✓ False

For construction contracts, the GFE package needs to be sent to [DBEgoal.gfe@dot.ca.gov](mailto:DBEgoal.gfe@dot.ca.gov) for OCR to review only for contracts that are more than \$2 million.

# Multiple Choice Question

For a construction contract, if a low bidder did not meet the DBE goal and the GFE was not adequate, the local agency:

- A. should award the contract to the next low bidder that met the DBE goal
- B. must invite the low bidder for an administrative reconsideration hearing before considering the next low bidder
- C. should re-advertise the contract and re-bid

# Answer:

For a construction contract, if a low bidder did not meet the DBE goal and the GFE was not adequate, the local agency

- B. Must invite the low bidder for an administrative reconsideration hearing before considering the next low bidder



# Multiple Choice Question

For a construction contract, in what time window does the Local Agency have to request the prime contractor or sub-contractor to promptly pay their sub-contractor after receipt of each progress payment, unless otherwise agreed to in writing:

- A. Not later than 7 days
- B. Not later than 15 days
- C. Not later than 30 days

## Answer:

For a construction contract, the Local Agency has to request the prime contractor or sub-contractor to promptly pay their sub-contractor after receipt of each progress payment not later than 7 days unless otherwise agreed to in writing.

A. Not later than 7 days

# True or False Question

If the Prime Contractor performs work shown on the Exhibit 15-G: Construction Contract DBE Commitment, to be performed by a DBE sub without prior written consent from the Local Agency, the Contractor is entitled to payment as long as the work is completed

True

False

# Answer

If the Prime Contractor performs work shown on the Exhibit 15-G: Construction Contract DBE Commitment, to be performed by a DBE sub without prior written consent from the Local Agency, the Contractor is entitled to payment as long as the work is completed

✓ False

The contractor must obtain the Local Agency's written approval to perform the work that is originally committed to a DBE firm





# Civil Rights Academy

Office of Civil Rights

Compliance Branch

Contract Evaluation Branch/  
Engineering Services Branch

Data Analysis Branch

# Office of Civil Rights (OCR)

## Develop

- DBE Program Plan for Caltrans and its subrecipients

## Report

- Departmental compliance to FHWA

## Provide

- Oversight to all divisions within Caltrans

## Certify

- DBE firms

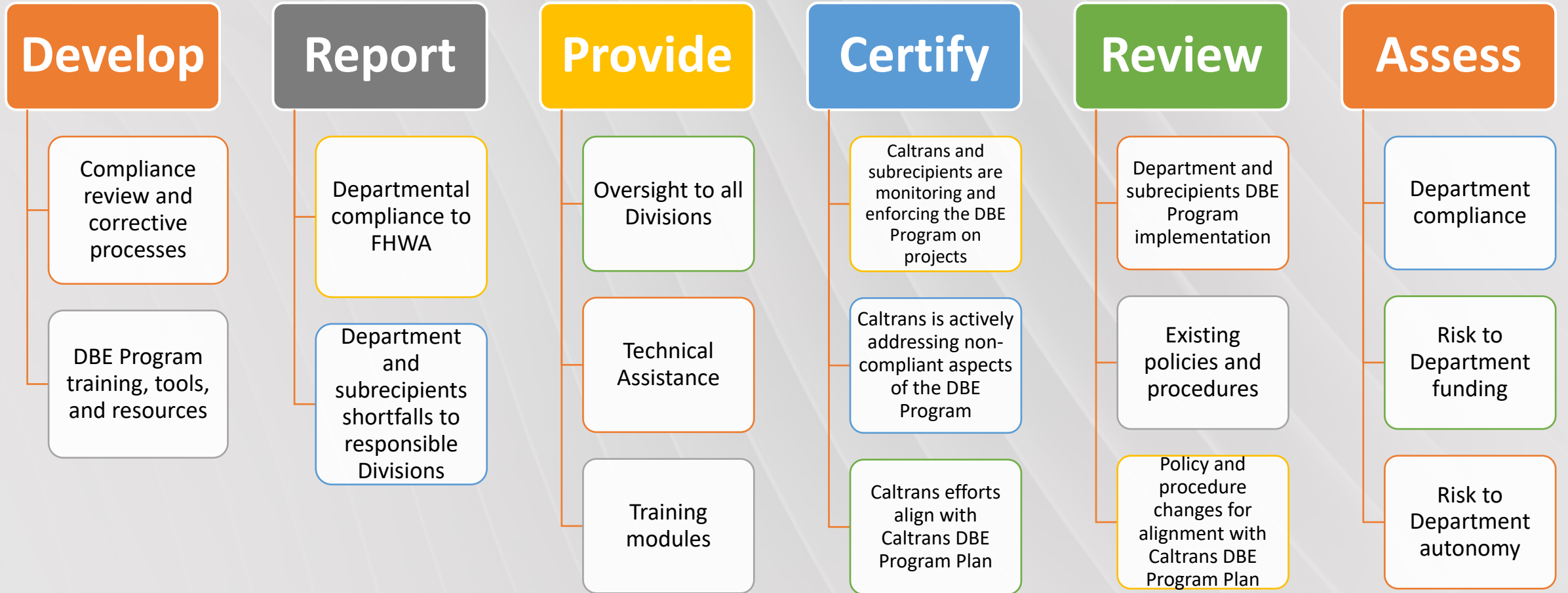
## Review

- DBE commitments prior to award

## Evaluate

- Bid Good Faith Efforts prior to award

# OCR Compliance Branch

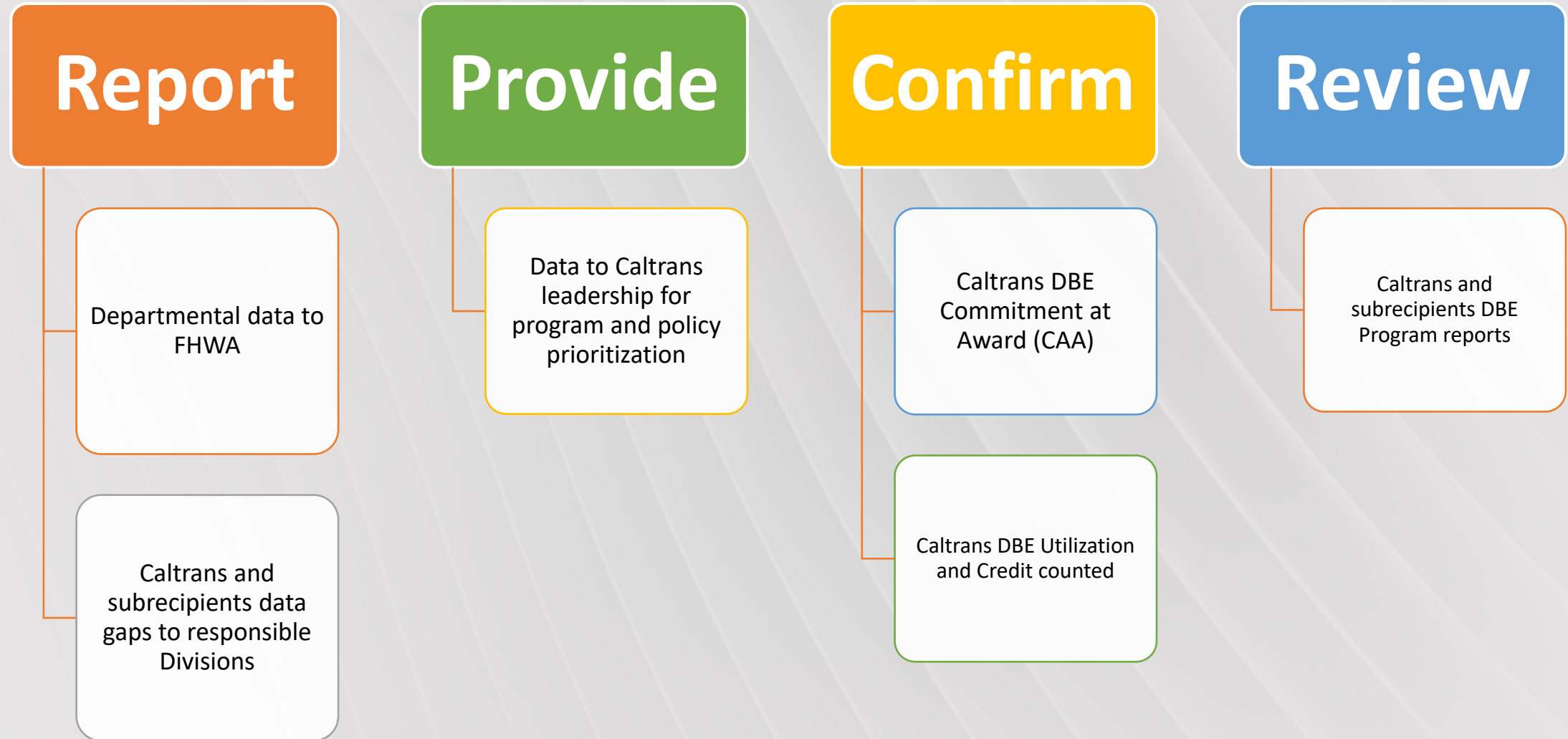




# OCR Contract Evaluation & Engineering Services Branch



# OCR Data Analysis Branch





## DBE Program: Monitoring and Enforcement

### **Commercially Useful Function**

*A DBE performs a commercially useful function when it is responsible for execution of the work of the contract or a distinct element of the work...by actually performing, managing, and supervising the work involved.*

**49 CFR 26.55**

### **A DBE subcontractor...**

- Supervisor exclusively employed by the DBE
- Must perform 30% of the work with its own workforce
- Must not share employees with non-DBE (particularly the Prime.)

### **A DBE supplier...**

- Maintains an inventory of supplies (some exceptions);
- Negotiates the price, places the order (quantity and quality), and pays the manufacturer; and
- Takes possession of the supplies

### **DBE Trucking Company...**

- Manages and supervises entire trucking operation.
- Owns and operates **at least one truck**.
- Must use DBE drivers or lease DBE trucks to receive full DBE credit.

FHWA Tips for Evaluating a Commercially Useful Function:

<https://www.fhwa.dot.gov/federal-aidessentials/commusefunction.pdf>

# Commercially Useful Function Evaluations

Prime contractors will be responsible to initiate an evaluation of every DBE on their project, at the start of the DBEs work. Caltrans RE, CM or District Compliance Office will verify and approve the evaluations for accuracy and completeness.

If CUF Evaluation finds violations, Corrective Action is required by the Prime and the DBE within an approved timeframe. These instructions will be provided via Construction's CUF Guidelines.

Caltrans can evaluate any contractor for CUF performance any time, in addition to the initial evaluation.



## DBE Monthly Reporting

### Verifying Commercially Useful Function & Prompt Payment

Before the 15th day of each month for the previous month's work, submit:

- Monthly DBE Trucking Verification form
- Monthly DBE Payment form

# Prompt Payment and Running Tally

- Prompt Payment monitoring is a DBE Program and CA State requirement on Caltrans and subrecipient projects.
- Monitoring Prompt Payment allows Caltrans to maintain a running tally of creditable DBE participation.
- Monitoring further accurately determines the amount and type of remaining DBE work that must be performed to complete a project with DBE credit.

# Caltrans Responsibility

## To determine if there is a violation:

1. Send a Request for Records
  - a. If records are not received: send a Final Notice
  - b. Failure to provide records results in withhold
2. If records are received
  - a. Review to determine if a violation has occurred
  - b. OCR Compliance Branch is available to assist
3. Send a Notice of Findings



Key and Definitions:

NOF: Notice of Findings

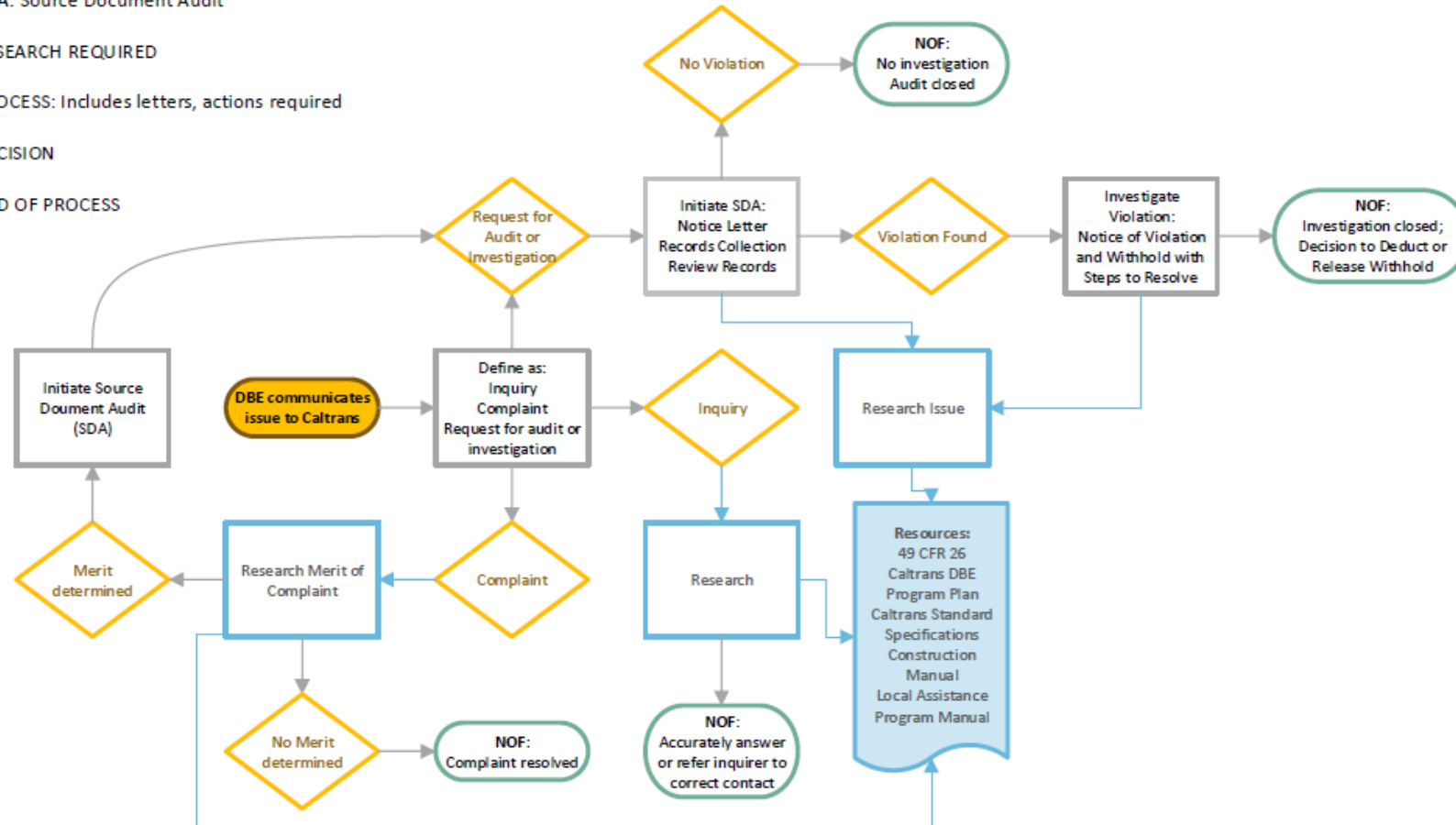
SDA: Source Document Audit

RESEARCH REQUIRED

PROCESS: Includes letters, actions required

DECISION

END OF PROCESS



# DBE Program Review Procedure

# Recommended Communication Protocol: Division statewide



# Recommended Communication Protocol: OCR Compliance Branch

## Office of Civil Rights Compliance Branch to Division HQ:

- Notify Division about complaints received
- Follow up on audits and investigations
- Report findings and closed cases
- Develop and facilitate training
- Coordinating technical assistance

## Division HQ to District staff:

- Notify staff about complaints and suspected violations
- Review records, if District or subrecipient needs help to determine findings
- Request Compliance Branch technical assistance on behalf of subrecipients, District or Division, as needed

## District to project staff and subrecipients:

- Initiate investigation and assist, as needed
- Advise on Caltrans DBE Program Plan and requirements
- Review records, if project staff or subrecipient is unable to determine findings

# Regulations & Policies

## Federal Regulations

- 1) 49 CFR 26 (DBE Program) <https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>

## California Regulations

- 1) Public Contract Code 4100-4144 (Subcontracting)  
[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PCC&division=2.&title=&part=1.&chapter=4.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PCC&division=2.&title=&part=1.&chapter=4.&article=)
- 2) Public Contract Code 10250-10265 (Prompt Payment)  
[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PCC&division=2.&title=&part=2.&chapter=1.&article=8.](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PCC&division=2.&title=&part=2.&chapter=1.&article=8.)

## Caltrans Policies

1. Caltrans Office of Civil Rights DBE Program Plan (to be published)
2. Caltrans Standard Specifications  
<https://dot.ca.gov/programs/design/ccs-standard-plans-and-standard-specifications>
3. Caltrans Construction Manual  
<https://dot.ca.gov/programs/construction/construction-manual>
4. Caltrans Local Assistance Procedures Manual  
<https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-procedures-manual-lapm>



# Disadvantaged Business Enterprise Forms For Federally Funded Contracts

*Presentation will follow a federal-aid project from  
implementation agreement to contract completion.*

# Forms Used in Sequence

## Implementation & Annual Submittal

9-A, 9-B & 9-C

### Preliminary Engineering Right of Way

#### Construction Engineering

- Contract Goal: 9-D
- Contract Language: 10-R
- Notice to Proposers: 10-1

### Award & After

- DBE Commitment: 10-01, 10-02, 15-H, 9-E
- A&E Task Order: 10-G
- DBE Running Tally: 9-F

### Construction

- Contract Goal: 9-D
- Contract Language: 12-G
- Sample Bid 12-H

- DBE Commitment: 15-D, 15-G, 15-H, 9-E
- DBE Trucking: 16-Z1
- DBE Running Tally: 9-F

### Close-out

DBE Utilization  
17-F, 17-F1  
& 17-0

## Implementation Agreement & Annual Submittal Forms

- For a local agency to receive federal financial assistance through Caltrans, the local agency must first sign the California Department of Transportation Disadvantaged Business Enterprise Implementation Agreement ([Exhibit 9-A](#)).
- Then, annually, by June 30 of each year for the following Federal Fiscal Year (FFY):
  - DBE Annual Submittal Form ([Exhibit 9-B](#))
  - Americans with Disabilities Act Form ([Exhibit 9-C](#))



# Support Phase Consultant Contracts

## **Preliminary Engineering**

- Environmental, Design

## **Right of Way**

- Acquisition, Surveying

## **Construction Engineering**

- Develop Contract Goal: [9-D](#)

## **Notice to Proposers: [10-I](#)**

- Local Agency determines

## **Contract Language: [10-R](#)**

# Consultant Contract Awards

## **Consultant Proposal DBE Commitment: *Was there a Goal? Was it Met?***

- [10-01](#), [10-02](#)
- Good Faith Effort: [15-H](#) & Evaluation [9-E](#)
  - Or see Reconsideration Hearing Sample procedure [9-H](#) (not a fillable form)
- Individual A&E Task Order: [10-G](#)
- DBE Running Tally: [9-F](#)
- DBE Utilization & /Status: [17-F](#), [17-F1](#) & [17-0](#)

# Construction Contracts

## Considering Your Contract Goal:

### 9-D

- What NAICS or Work Codes are being utilized in a line item from your estimate?
- What tasks are typically sub-contracted out for your region?  
Lookup UCP Database and New CUCP
- Add Contract Language: 12-G
- Include a Sample Bid in your advertised package 12-H

# Award Construction Contract

## **Bidders Tabulation Sheet**

- Exhibit [15-D](#)

## **DBE Commitment: *Was there a Goal? Was it Met?***

- Good Faith Effort: all bidders [15-G](#) and [15-H](#), [9-E](#) Evaluation of GFE, Sample procedure for reconsideration hearing [9-H](#)

# Manage Construction Contract

## **Disadvantaged Business Enterprise**

- DBE Trucking: [16-Z1](#)
- DBE Running Tally and Prompt Payment: [9-F](#)

# Close Construction Contract

## **DBE Final Utilization**

- First-Tier Subcontractors: Exhibit [17-F](#)
- [17-F1](#)
- Certification Status Change: Exhibit [17-0](#)

# Forms Used in Sequence

## Implementation & Annual Submittal

9-A, 9-B & 9-C

### Preliminary Engineering Right of Way

#### Construction Engineering

- Contract Goal: 9-D
- Contract Language: 10-R
- Notice to Proposers: 10-1

### Award & After

- DBE Commitment: 10-01, 10-02, 15-H, 9-E
- A&E Task Order: 10-G
- DBE Running Tally: 9-F

### Construction

- Contract Goal: 9-D
- Contract Language: 12-G
- Sample Bid 12-H

- DBE Commitment: 15-D, 15-G, 15-H, 9-E
- DBE Trucking: 16-Z1
- DBE Running Tally: 9-F

### Close-out

DBE Utilization  
17-F, 17-F1  
& 17-0

# Recent Findings From Audits

49 CFR 26 .29(e )  
LAPM Ch. 9.6

For all projects, include prompt payment clauses  
**9-F will include Prompt Payment verification for LPAs**

49 CFR 26.53  
LAPM Ch. 9.8

For all projects, include administrative remedy language regarding to the termination of DBE.

49 CFR 26.53 (b)(2)  
and LAPM Ch. 9.7

Include in all winning bid documents DBE names addresses, description of work, dollar amount for each participating DBE, written confirmation from the DBE.

Note: Prevention of DBE violations is preferable to imposing penalties for non-compliance.  
LAPM Chapter 16, P. 24.



# Thank you for attending: DBE Forms

Presenters:

Cindy Shipley

Clean CA, DBE Liaison

Office of Local Assistance, Caltrans District 3

[cynthia.shipley@dot.ca.gov](mailto:cynthia.shipley@dot.ca.gov)

530.720.3563

# DBE RESOURCES

## Emails:

- OCR Business Support Unit Inbox: [Business.Support.Unit@dot.ca.gov](mailto:Business.Support.Unit@dot.ca.gov)
- DLA DBE Inbox (Goals, GFEs & DBE Questions): [dbegoal.gfe@dot.ca.gov](mailto:dbegoal.gfe@dot.ca.gov)

## Links:

- Caltrans CUCP Database/DBE Search: <https://dot.ca.gov/programs/civil-rights/dbe-search>
- Code of Federal Regulations - 49 CFR Part 26: <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=c557e0c662d8af4ad52a31b56b5bb2f2&n=49y1.0.1.1.20&r=PART&ty=HTML>
- DLA Email Distribution List (Blog, Policy Updates, Trainings): <http://www.localassistanceblog.com/>
- DLA Forms: <https://dot.ca.gov/programs/local-assistance/forms>
- DBE Program: <https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/disadvantaged-business-enterprise>

# DBE RESOURCES

- Directory of DBE Certified Firms: <https://dot.ca.gov/programs/civil-rights/dbe-search>
- CA DOT - DBE Program Plan 2016: <https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/f0004052-caltransdbeprogramplan-a11y.pdf>
- LAPM: <https://dot.ca.gov/programs/local-assistance/guidelines-and-procedures/local-assistance-procedures-manual-lapm>
- LTAP: <https://californialtap.org/>
- US DOT - Appendix A to Part 26 - Guidance Concerning Good Faith Efforts: <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/appendix-a-to-part-26-guidance-concerning-good-faith-efforts>
- US DOT FHWA - Evaluating Good Faith Efforts: <https://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?id=85>





# Construction Oversight Program (COP)

<https://dot.ca.gov/programs/local-assistance/guidance-and-oversight/construction-oversight-program>



## Construction Oversight Program

### Construction Oversight Program (COP)

#### Roles and Responsibilities

- **Perform Project Reviews with Local Agency Staff and their Construction Management Consultants**
  - Not auditors, but measure FHWA compliance
  - Issue Findings
- **Resource for Local Agency Questions / Issues**
  - Can review Change Orders (COs) for quality and participation
- **Issues Guidance on Current Issues as Necessary**
  - Publishes Office Bulletins, COINS on DLA website
- **Conducts Training**
  - RE Academy, Federal-Aid Series, Individual Agency / Regional Agency Training
- **Assists District Local Assistance Engineers**

# Construction Oversight Engineers (COE)



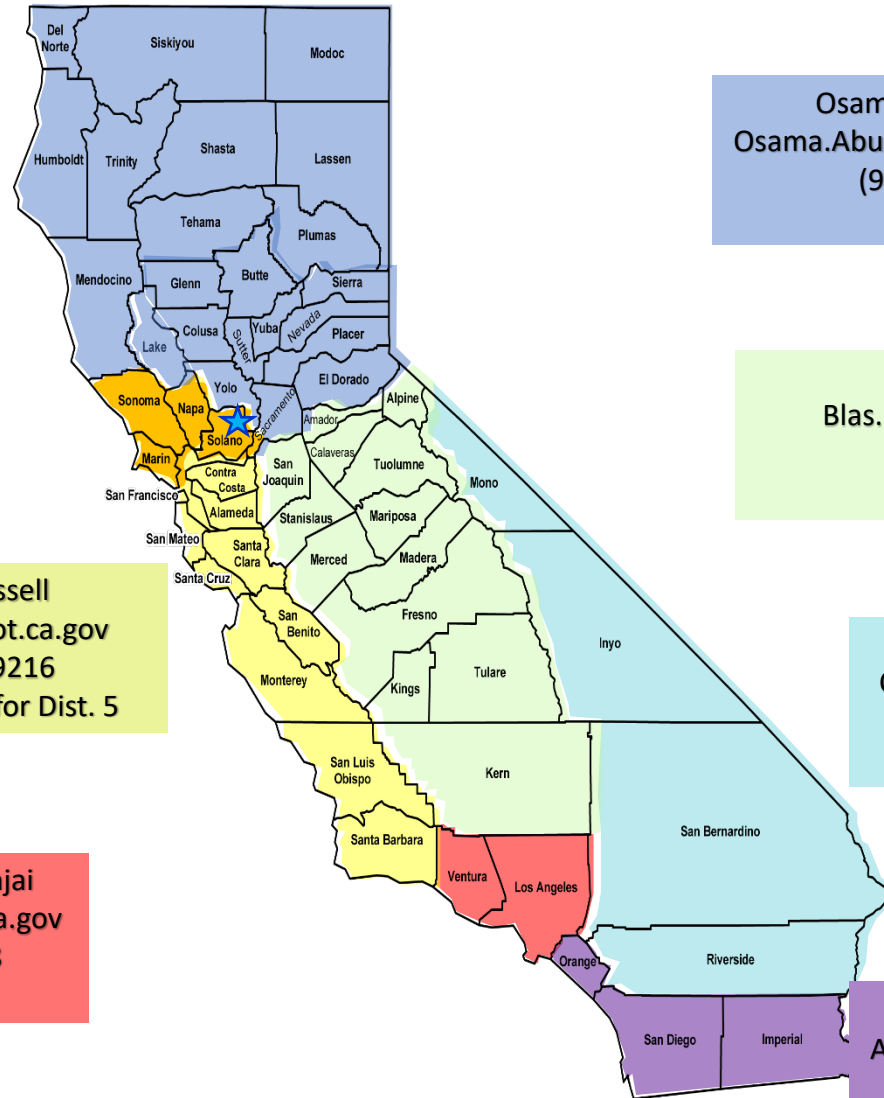
**Girmay Beyene**  
Girmay.Beyene@dot.ca.gov  
(916) 275-4587  
COE Program Manager  
Dist. 4 (North half) ★



**Patrick Dussell**  
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Dist. 4 , Acting for Dist. 5



**Seree "Mack" Yenjai**  
Seree.Yenjai@dot.ca.gov  
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Dist. 7



**Osama Abu-Markhieh**  
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**Anna Alonso**  
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(916) 205-9947  
Dist. 11, 12



# Construction Oversight Program: Reviews

## **Types of COE Reviews**

### Pre-Construction Reviews

<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/c16/pre-construction.pdf>

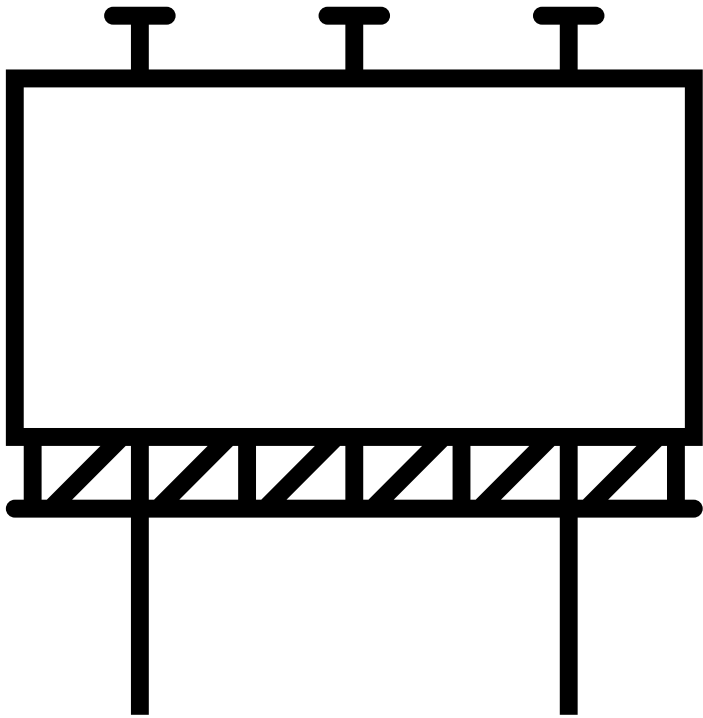
### Mid-Construction Reviews

<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/c16/mid-construction.pdf>

### Post-Construction Reviews

<https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/c16/post-construction.pdf>





COE Review of DBE Program  
during construction

# COE Review Form: DBE section

## J. DBE & SUBCONTRACTING ADMINISTRATION (LAPM, Sections 16.9 & 16.7):

01. Who is the LPA's DBE liaison officer?
02. What is the Project DBE percentage goal?
03. What is the Construction Contract DBE Commitment, Exhibit 15-G percentage goal commitment?
- 04: If contractor did not meet the Project DBE percentage goal, did the LPA perform and file an Evaluation of Good Faith Effort, Exhibit 9-E, or similar in the project records?
05. Has contractor utilized all DBEs listed on Exhibit 15G as required to date?
06. Is there any commitment to utilize DBE trucking for this contract?  
If yes, are Monthly DBE Trucking Verification, Exhibit 16-Z1, on file?
07. Has contractor submitted any request to substitute a DBE as listed on Exhibit 15-G yet?  
If yes, has appropriate DBE substitution process been followed and documented by LPA?
08. Has any CCO affected the amount of DBE work?
09. Has the prime contractor submitted and the RE approved the Subcontracting Request, Exhibit 16-B, prior to any subcontractor work being performed?
10. Comments:

# COE Review of DBE Administration:

## Core Questions:

LPAs should ensure the following documents are in the project file.

- LPA DBE's liaison officer
- Project DBE goal & commitment, 15-G
- Good Faith Effort, 9-E
- Approved subcontracting request, 16-B
- Monthly DBE Trucking Verification, 16-F
- CCO affected DBE work
- Final Report of DBE Utilization, 17-F

# DBE Program: Before Work Begins

## Subcontracting Request, LAPM Exhibit 16-B

(Handout Pg. 9)

CTSS Section 5-1.13, Subcontracting Greenbook  
Section 2-3.3, Status of Subcontractors  
LAPM Section 16-7

Local Assistance Procedures Manual Exhibit 16-B  
Subcontracting Request

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**EXHIBIT 16-B SUBCONTRACTING REQUEST**

CONTRACTOR NAME Cheatum Construction				COUNTY S.L.O.	ROUTE
BUSINESS ADDRESS 777 Lucky Drive				CONTRACT NUMBER 05-ORD-834	
CITY AND STATE Palm Dale, CA			ZIP CODE 92121	FEDERAL-AID PROJECT NUMBER ACNH-000C(380) E	

A. SUBCONTRACTOR (Name, Business Address, Phone)	B. BID ITEM NUMBER (S)	C. PERCENTAGE OF BID ITEM SUBCONTRACTED	D. SUB LISTED AT BID TIME		E. CERTIFIED DBE		F. DESCRIBE WORK WHEN LESS THAN 100% OF WORK IS SUBCONTRACTED	G. DOLLAR AMOUNT BASED ON THE BID AMOUNT
			Yes	No	Yes	No		
Water Smart	2	100	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Prepare Uud Plan	\$2,500.00
Blue Sky, LLC	4	100	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Water Pollution Ctl	\$495.00
East Pacific Serve U	9	100	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	QSP Inspection	\$6,875.00
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

I certify that:

- The Standard Provisions for labor set forth in the contract apply to the subcontracted work.
- If applicable, Form FHWA- 1273 of the Special Provisions has been inserted in the subcontracts and should be incorporated in any lower-tier subcontract. Written contracts have been executed for the above noted subcontracted work.

Contractor's Signature <i>Chris Bacon</i>	Date <i>3/8/2015</i>
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This section is to be completed by the resident engineer.

1. Total of bid items		\$ <u>997,556</u>
2. Contractor must perform with own forces (line 1 x contract req. %)	<u>30</u>	\$ <u>299,266.91</u>
3. Bid items previously subcontracted (taken from previously approved 16-B)		\$ <u>121,181.35</u>
4. Bid items subcontracted (this request)		\$ <u>9,870</u>
5. Total bid items subcontracted (line 3 plus 4)		\$ <u>131,051.35</u>
6. Balance of work contractor to perform (line 1 minus 5)		\$ _____

Approved	
RESIDENT ENGINEER'S SIGNATURE <i>Brody Lea</i>	DATE <i>3/11/2015</i>

Copy Distribution : Original-Contractor Copy- Resident Engineer Copy- OBBO- [smallbusinessadvocate@dot.ca.gov](mailto:smallbusinessadvocate@dot.ca.gov) or fax to (916) 324-1949

Handout Page 9

Page 1 of 2  
January 2018

# DBE Program Review

## LAPM Exhibit 16-Z1

State of California-Department of Transportation

### Exhibit 16-Z1 Monthly DBE Trucking Verification

Contract No.			Month			Year	
Truck Owner	DBE Cert No.	Company Name and Address	Truck No.	California Highway Patrol CA. No.	Commission of Amount Of Amount Paid*	Date Paid	Lease Arrangement (if applicable)
					\$		Lease Agreement with NON-DBE with DBE <input type="checkbox"/>
					\$		Lease Agreement with NON-DBE with DBE <input type="checkbox"/>
					\$		Lease Agreement with NON-DBE with DBE <input type="checkbox"/>
					\$		Lease Agreement with NON-DBE with DBE <input type="checkbox"/>
					\$		Lease Agreement with NON-DBE with DBE <input type="checkbox"/>
					\$		Lease Agreement with NON-DBE with DBE <input type="checkbox"/>
					\$		Lease Agreement with NON-DBE with DBE <input type="checkbox"/>
					\$		Lease Agreement with NON-DBE with DBE <input type="checkbox"/>
					\$		Lease Agreement with NON-DBE with DBE <input type="checkbox"/>
Total Amount Paid					\$		

Prime Contractor	Business Address	Business Phone No.
------------------	------------------	--------------------

\*Upon Request all Lease Agreements Shall be made available, in accordance with the special Provisions

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT

Contractor Representative Signature	Title	Date
-------------------------------------	-------	------

# DBE Program Review

## EXHIBIT 17-F FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS

1. Local Agency Contract Number		2. Federal-Aid Project Number		3. Local Agency		4. Contract Completion Date	
5. Contractor/Consultant			6. Business Address			7. Final Contract Amount	
8. Contract Item Number	9. Description of Work, Service, or Materials Supplied	10. Company Name and Business Address	11. DBE Certification Number	12. Contract Payments		13. Date Work Completed	14. Date of Final Payment
				Non-DBE	DBE		
15. ORIGINAL DBE COMMITMENT AMOUNT \$				16. TOTAL			

List all first-tier subcontractors/subconsultants and DBEs regardless of tier whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at the time of award, provide comments on an additional page. List actual amount paid to each entity. If no subcontractors/subconsultants were used on the contract, indicate on the form.

<b>I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT</b>			
17. Contractor/Consultant Representative's Signature	18. Contractor/Consultant Representative's Name	19. Phone	20. Date
<b>I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED</b>			
21. Local Agency Representative's Signature	22. Local Agency Representative's Name	23. Phone	24. Date

DISTRIBUTION: Original – Local Agency, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

**ADA NOTICE:** For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

## LAPM Exhibit 17-F



# Division of Local Assistance Architectural & Engineering (A&E) Branch

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## **Bing Luu, Program Manager**

### Procurement Oversight Engineers

The' Pham: Districts 1, 2, 3

Pam Wells: Districts 4 (NAP, SON, MRN, SF, SM), 5, 6

John Yang: Districts 7, 11, 12

Bing Luu: District 9

Hiep Nguyen: Districts 4 (SOL, CC, ALA, SCL), 8, 10



# A&E Consultant Contracts

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- Refer to LAPM Chapters 9 (DBE requirements) and 10 (consultant procurement)
- DBE requirements apply to all federally-funded A&E contracts
- DBE goals must be stated in solicitation documents and advertisement (RFQ/RFP)
  - Include Exhibit 10-I: *Notice to Proposers DBE Information*
- The submitted proposal must include Exhibit 10-O1: *Consultant Proposal DBE Commitment*
- The executed contract must include Exhibit 10-O2: *Consultant Contract DBE Commitment*

# A&E Consultant Contracts

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- On-call contracts
  - Establish DBE goal at the master on-call contract level
  - Exhibit 10-G: *Individual A&E Task Order DBE Tracking Sheet* must be used to track percentage of DBE per task order
- Project completion – Submit the following:
  - Exhibit 17-F: *Final Report – Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors*
  - Exhibit 17-F1: *Final Report – Utilization of Disadvantaged Business Enterprises for On-call Contracts*
  - Exhibit 17-O: *DBE Certification Status Change*
- Include Title VI assurances in the contract agreement language (see Exhibit 10-R: *A&E Boilerplate Agreement Language* template)