



ADOT

BECO

(Business Engagement and Compliance Office)

**Certification Acceptance Agency (CA)
Certification/Recertification**

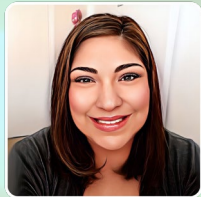
August 2023

BECO LPA TEAM:



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Local Public Agency/
Sub-Recipient Program Manager



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DBE & OJT
Compliance Technician





DBE Compliance Requirements



Prompt Payment and
Payment Reporting



Updated Retainage
Compliance Requirements



Questions submitted and
other questions and remarks



Resources

ADOT'S DBE PROGRAM

ADOT has established a DBE Program in accordance with regulations of the US DOT, 49 CFR Part 26. ADOT has received federal assistance from the US DOT and as a condition of funding, ADOT has signed an assurance that it will comply with 49 CFR Part 26.

It is ADOT's policy to ensure that DBEs have an equal opportunity to receive and participate in DOT-assisted contracts.

Here we will discuss the DBE compliance regulations in depth.

BECO LPA/SR Compliance Checklist FHWA Construction Contracts

	COMPLIANCE REQUIREMENTS	ACTION	
		LPA/SUBRECIPIENT	ADOT
PRE-BID			
PRE-BID REQUIREMENTS			
1	Request for DBE Goal - Agency must submit a request for DBE goal setting along with the Final Scope of Work to BECO prior to federal authorization. The DBE Goal Assessment Email must be included in the Federal Authorization Package to ADOT. TRACS Number must be included in the request for DBE Goal.	Agency coordinates with Agency PM to complete the Construction DBE Goal Setting Worksheet in the DBE Goal Setting System . The Final Scope of Work must be submitted to DBEContractGoals@azdot.gov when requesting a DBE Goal to obtain the DBE Goal Assessment Email.	BECO makes a determination and provides a response within 10 days
2	Contractor DBE Liaison is designated by contractor for administration of the contractor's DBE Program.	In accordance with the ADOT DBE Program Plan, the Agency's selected DBE Liaison collaborates with contractor's DBE Liaison regarding DBE matters.	BECO monitors and provides guidance
3	Good Faith Effort (GFE) is a continuous process that starts before a bid is submitted. Bidders shall reference the "Good Faith Effort Guide" and DBE Provisions. Contractor should contact the Agency and/or BECO prior to submission of bids to receive assistance locating DBE firms. Reference Part 49, CFR 26, Appendix A and/or LPA EPRISE Section 15.0	Agency documents contractor's request for assistance and notifies BECO that assistance has been requested.	BECO provides support to the Agency and assists the contractor to locate DBEs
BID ADVERTISEMENT AND BID PACKAGE REQUIREMENTS			
4a	The DBE Contract Goal obtained from the DBE Goal Assessment Email and the TRACS Number must be included in the Bid Advertisement and other solicitations.	Agency must include the DBE Goal Percentage in the Bid Advertisement and incorporate the TRACS Number in federal-aid project solicitations. Goals expire after 120 days of assessment. Agency must resubmit for goal assessment if goal has expired.	BECO provides Agency the most current DBE related provisions and forms Subject to ADOT review
4b	DBE Special Provisions: <ul style="list-style-type: none"> • LPA EPRISE WITH GOAL or • LPA EPRISE WITHOUT GOAL 	Projects with DBE Goal (race conscious "RC"), Agency includes LPA EPRISE WITH GOAL . Projects with no DBE Goal (race neutral "RN"), Agency includes LPA EPRISE WITHOUT GOAL in applicable bid packages.	
4c	DBE Goal Assurance Form 3102C	Agency must include this form in all RC solicitations (not RN)	
4d	DBE Individual (Form 3105C) and Summary Affidavits (3106C)	Agency must include this form in all RC solicitations (not RN)	
4e	LPA Prompt Pay and Payment Reporting Provisions	Agency must include contract provisions in Bid Package	
4f	EEO Compliance Report is included in bid package	Agency must include in all RC and RN construction contracts	
4g	OJT Specifications – to be determined	Agency must include in contracts with OJT goals	



DBE Procedures

Agency Documents Reviewed By ADOT BECO

- DBE Procedures

Submit to ADOT LPA Section before October 6, 2023

Assessment Questions

Question	Y/N	Document, Page, Paragraph <i>(To be completed by CA)</i>	Check if changed since 2019 <i>(CA to complete)*</i>	Item of Concern <i>(DBE use only)*</i>
Does the Agency have a plan for training DBE staff on managing federally funded projects?				
Does the Agency follow the current ADOT FHWA DBE Plan?				
Does the Agency follow the current DBE EPRISE (DBE contract language)?				
Does the Agency have a DBE Liaison?				
Do the DBE Procedures require the agency to:				
Follow the most current DBE Plan, DBE EPRISE (DBE contract language).				
Submit the required documents to ADOT BECO for Federal-aid Highway Program (FAHP) projects to be assessed for DBE Goal and ensuring the DBE Goal is "valid" for advertisement.				
Obtain from BECO and provide to bidders and proposers all current BECO LPA Forms.				
Include a "valid" DBE goal percentage in advertisement, solicitations, and contract documents.				
Provide written notice to BECO and the ADOT PM immediately before termination of a FAHP contract related to the DBE Program.				
Conduct a bid analysis process to justify the approval or rejection of submitted DBE Assurance Form and DBE Affidavits forms and request concurrence from ADOT BECO.				
Ensure receipt of Bid Verification Notice from ADOT BECO before contract award.				
Ensure Good Faith Effort (GFE) documentation is provided to meet requirements of EPRISE Specifications (as applicable).				

Question	Y/N	Document, Page, Paragraph <i>(To be completed by CA)</i>	Check if changed since 2019 <i>(CA to complete)*</i>	Item of Concern <i>(DBE use only)*</i>
Notify ADOT PM and ADOT BECO of contract award or rejection of bids.				
Report contract awards to BECO by the 10th of the month following contract award.				
Ensure committed DBEs subcontracts are provided to agency by prime at preconstruction meeting.				
Monitor contract, contractor and subcontractor information, and report prime payments in the LPA DBE System in accordance with Prompt Payment & Payment Reporting Provisions.				
Monitor and enforce the Prompt Payment & Payment Reporting Provisions for prime contractor payments to subcontractors.				
Monitor DBE participation to ensure the Termination, Substitution, Reduction EPRISE specifications are met.				
Monitor DBE utilization on projects, notifying ADOT BECO when aware of a potential issue that may affect DBE commitments made at award.				
Conduct a Commercially Useful Function (CUF) review for each DBE on a FAHP project.				
Obtain Certification of Final DBE Payment forms from prime contractor and determine if established DBE goal has been met.				
Monitor FAHP contracts for compliance and consider imposing sanctions when a contractor fails to be in compliance with EPRISE specifications.				
Monitor LPA DBE System in preparation for the semi-annual reporting by ensuring contract payments are up to date.				
Ensure timely closeout of contracts in the LPA DBE System.				

See Appendix B for additional resources.

DBE LIAISON



The agency's DBE Liaison collaborates with the prime contractor's DBE Liaison regarding all DBE compliance matters

The prime contractor's DBE Liaison is responsible for the administration of the DBE Program

DBE GOAL ASSESSMENT



NOTE:

Please ensure all Agency staff who require use of the DBE Goal Setting Application have been granted access. If assistance is required, please see page 4 of the User Manual in the DBE Goal Setting Application, and allow 48 hours processing time

SUBMIT

DBE Goal Assessment Request



COMPLETE

DBE Goal Setting Worksheet with PM



INCLUDE

DBE Goal Assessment Email in Federal Authorization Package



GOOD FAITH EFFORTS (GFE)



Contractor:
Contact agency for
assistance BEFORE
submission of bid



Contractor:
Reference
49 CFR 26 and
LPA EPRISE



Agency:
Document request
for assistance
and notify BECO



BECO:
Provides support
to agency and
assists contractors



TRACS Number



Assessed DBE Goal Percentage



LPA EPRISE with (RC) or without (RN) DBE Goal



DBE Goal Assurance Form (3102C) - RC only



DBE Affidavits (3105C and 3106C) - RC Only



LPA Prompt Pay & Payment Reporting Provisions



EEO Compliance Report

DBE GOAL ASSURANCE (FORM 3102)



Contractor:

Form submitted by all contractors



Contractor:

DBE Goal being met?
Yes or No



Contractor:

Completed/
signed form with bid
submittal



Agency:

Receive and review form for accuracy



Agency:

Submit form to BECO for concurrence



AZ UTRACS Registration

[Start AZ UTRACS Registration](#)

AZ UTRACS Registration is a business registration required for all firms who wish to work on federally funded transportation projects in Arizona, including Prime Contractors and Prime Consultants, Subcontractors, Subconsultants, Disadvantaged Business Enterprises (DBEs), and Small Business Concerns (SBCs).

This registration satisfies a federal requirement (49 CFR Part 26.11(c)) that instructs ADOT to maintain a bidder's list to help the agency calculate its overall triennial DBE for FHWA, FTA and FAA funded contracts, as well calculate individual contract goals for FHWA funded contracts.

A benefit associated with completing this registration is that your firm is added to the AZ UTRACS Directory and a comprehensive firm profile is created, at no cost to your firm. This is used to advertise to the business community. This allows firms to find one another and partner to complete Arizona's firm directory, where firm profiles are accessed, also helps firms find DBEs and SBCs needed to meet requirements.



All contractors and all subcontractors, including DBEs, must be registered in the AZ UTRACS Web Portal

The Agency can provide assistance to contractors with AZ UTRACS registration, as necessary. BECO can support.

DBE DOCUMENT SUBMITTAL CONTRACTOR



[Online
Bidders
List](#)



DBE Individual
Affidavit(s)
([3105C](#))



DBE
Summary
Affidavit ([3106C](#))

DBE DOCUMENT SUBMITTAL AGENCY

1



COLLECT

Bidders List
Email Confirmations

2



RECEIVE

all DBE Affidavits by
4:00pm on 5th
calendar day

4



REVIEW

ALB forms. If ALB is deemed
non-responsive, review
subsequent low bidder's
submittal etc.

3



REVIEW

all forms for accuracy
and completeness

5



COMPILE

determined ALB's forms
and submit to BECO for
concurrence

BECA

responds to Bid
Verification submittal
within 5 business days

GOOD FAITH EFFORTS (GFE)



DBE GOAL

not met,
bidder submits
GFE to agency



ELIGIBILITY

only for bidders
that demonstrate
adequate GFE



CONTACT

BECO within 24 hours
of receiving GFE
documentation



REVIEW

of GFE documentation
by BECO with notice to
agency inside 7 days

Guadalupe Rd

EXECUTED CONTRACT



LPA EPRISE

Contract Language
(with or without Goal)



DBE GOAL

Assurance Form 3102C
(Race Concious Only)



DBE AFFIDAVITS

Individual 3105C & Summary
3106C (Race Concious Only)



TERMINATION/ Substitution/Reduction of Work

Form 3108C (Race Concious Only)



CERTIFICATION

of Final DBE Payments
(COP) Form 3110C



LPA PROMPT PAY

and Payment Reporting
Provisions



EQUAL EMPLOYMENT

Opportunity Compliance Report
Form FHWA-1391

Sign here
←

statements to
should accurate
Yes No
Yes No
Yes No
Yes No

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5, and 6.

(OIC) (Rev. 3/2018)

REPORTABLE CONTRACTS



FHWA MONTHLY REPORT



Agency submits FHWA Monthly Report to BECO at LPAContractorCompliance@azdot.gov by the 10th of every month, using the provided template



BECO Technology & Federal Reporting Team reviews the FHWA Monthly Report for accuracy

DBE SUBCONTRACTS



COLLECT

DBE
Subcontracts



REVIEW

DBE
Subcontracts



INCLUDE

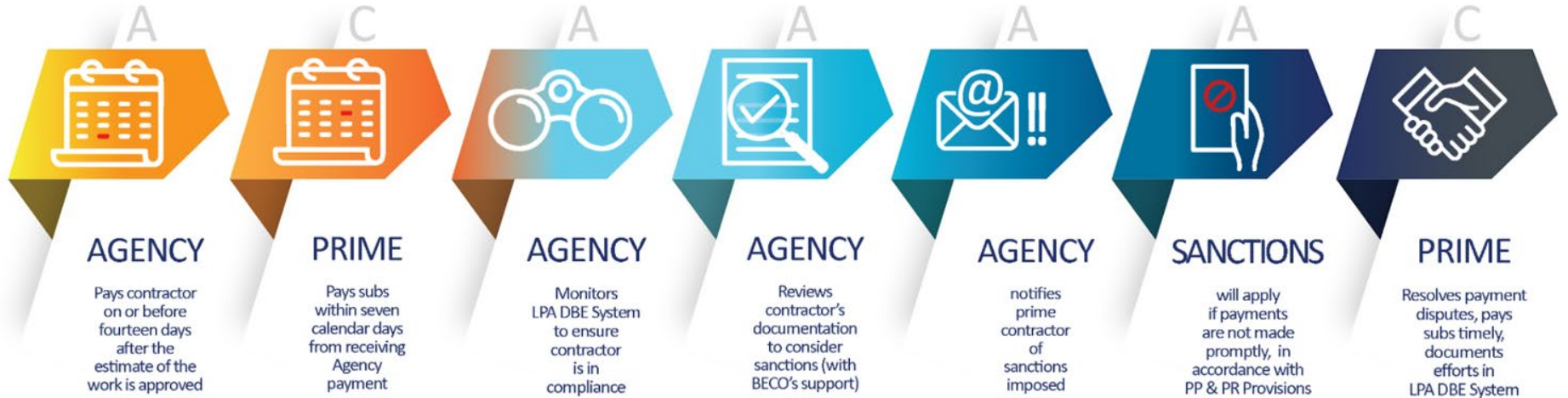
LPA DBE Subcontract
Compliance Assurances



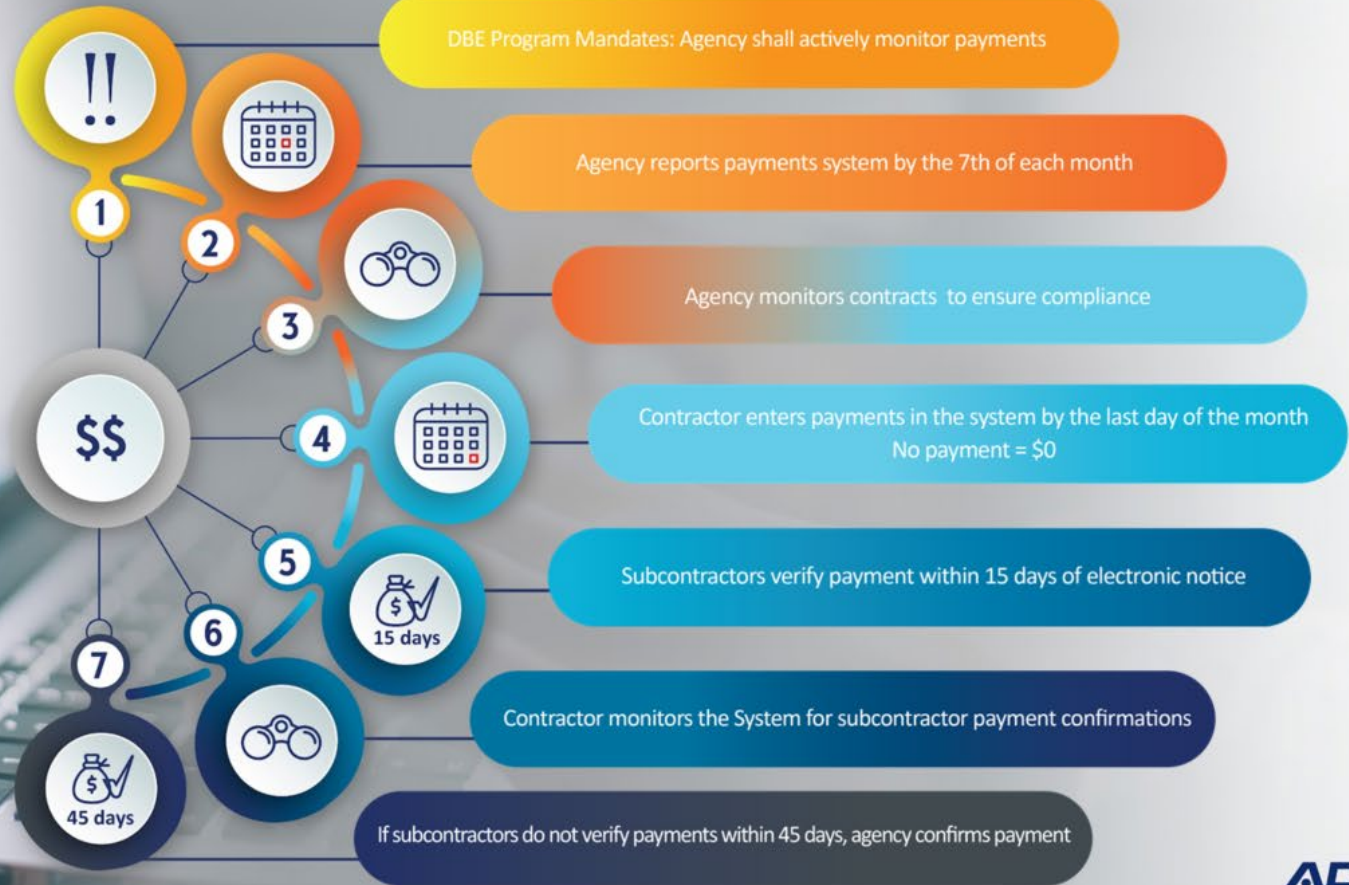
INCLUDE

LPA Prompt Pay and
Payment Reporting

PROMPT PAYMENT



PAYMENT REPORTING



SANCTIONS



MONITOR

contracts monthly to ensure compliance with payment reporting



CONTACT

BECO for Support



NOTIFY

Contractor of possible sanctions



SANCTIONS

apply if payments are not reported every month

The contractor shall make all reasonable efforts to avoid a TSR of a committed DBE

The contractor shall advise the agency within 24 hours of the first sign of TSR

The agency shall notify BECO immediately upon receiving notification from the contractor



All TSRs must be approved by the Agency, with BECO's concurrence

Contractor sends written notice to the DBE of intent to terminate/substitute/reduce work

The DBE has at least five calendar days to respond in writing

Contractor request to agency includes:

- [TSR Request Form 3108C](#)
- DBE's Response
- Additional Documents

1 Contractor's request and DBE's response



Additional documentation **2**



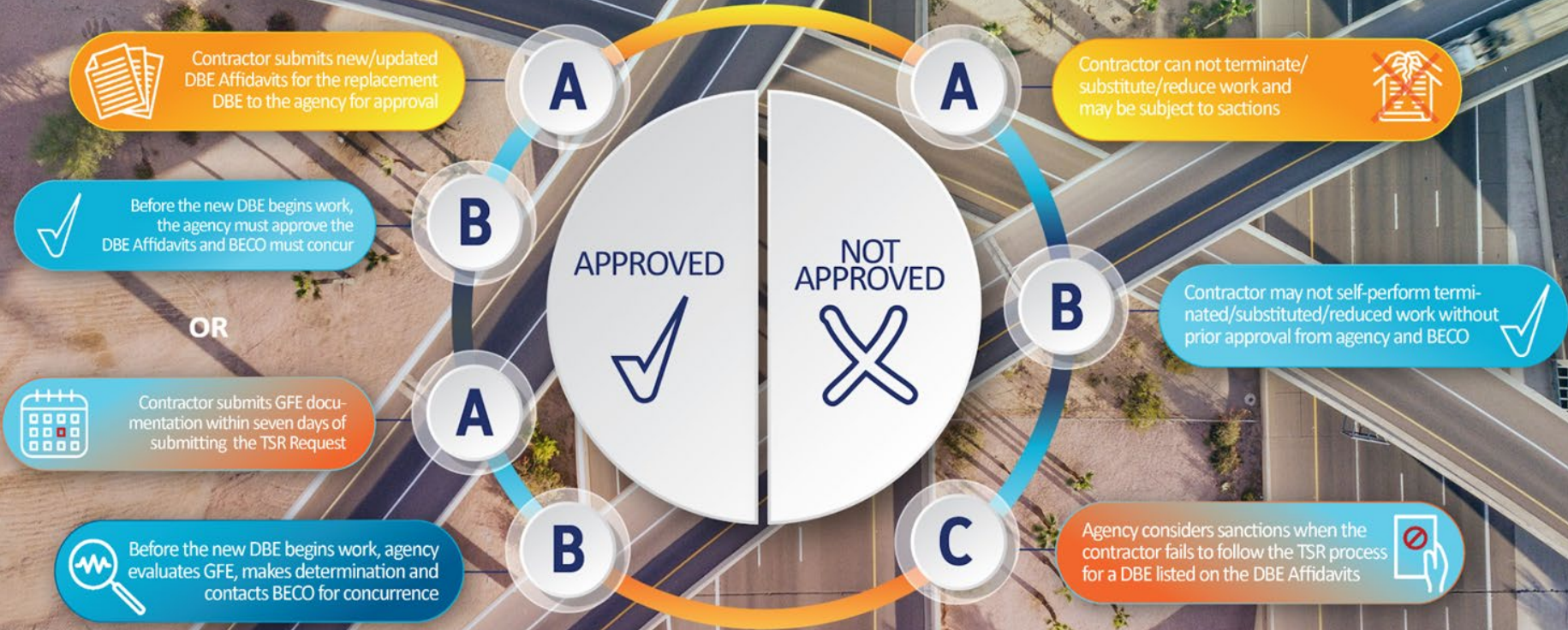
Agency reviews formal request and provides determination in writing to BECO for concurrence.

Agency communicates decision to contractor and DBE. The Agency and BECO consider:



4 Good cause (as outlined in the LPA EPRISE)

Agency staff documentation of the issue **3**



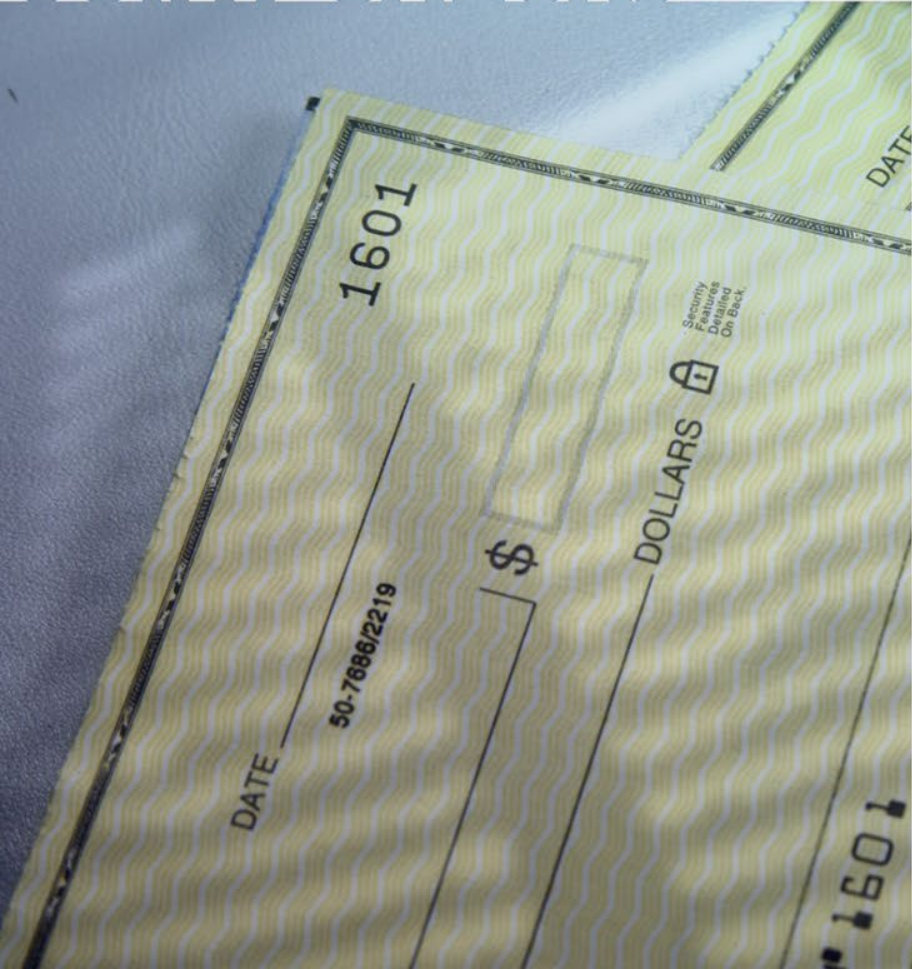
A CUF review confirms if a Prime can receive DBE credit for work performed by a DBE

A DBE must perform at least 30% of the cost of its contract with its own workforce

Only work performed by a DBE can be counted for DBE credit



JOINT CHECKS



1

For all Joint Checks Requests where a DBE is a party the contractor shall follow the LPA EPRISE Section 23.0

2

A written Joint Checks Agreement must be issued and signed by all parties before any joint checks are issued

3

The Joint Check Request Form 3109C should be used

4

Agency contacts BECO to obtain approval from BECO for any Joint Check requests

CERTIFICATION OF FINAL DBE PAYMENT (COP)



CONTRACTOR

submits COP Form to agency no later than 30 days after DBE completes work



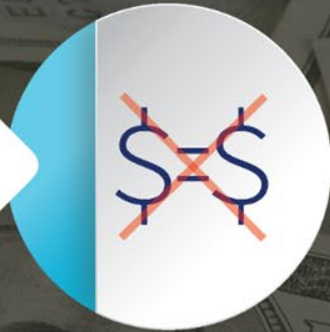
AGENCY

reviews COP, verifies \$\$ amounts with approved DBE Affidavits and LPA DBE System



AGENCY

approves COP, and sends to BECO for concurrence if \$\$ amounts match



AGENCY

coordinates with contractor for reconciliation if \$\$ amounts do not match



AGENCY

sends to BECO for concurrence once reconciled, and loads copy into LPA DBE System

MEETING THE DBE GOAL CONTRACTOR



Contractor monitors compliance in meeting the DBE Goal throughout the life of the contract



Contractor must meet the assessed DBE Goal on the contract, or provide GFE



Contractor is subject to sanctions if the assessed DBE Goal is not met at the end of the project



Contractor can appeal the decision to the ADOT State Engineer



MEETING THE DBE GOAL AGENCY

1



Agency monitors throughout the life of the contract

2



At the time of substantial completion, Agency determines if assessed DBE Goal was met

3



If DBE Goal was not met, Agency evaluates all provided GFE documentation

4



Agency makes determination and notifies BECO for concurrence

5



Agency may impose sanctions in accordance with LPA EPRISE Section 26.0

6



Agency provides Completion Cover Letter to BECO

CONTRACT CLOSEOUT

CONTRACT



FHWA SEMI-ANNUAL REPORT



Agency reviews semi-annually in April and October



LPA DBE System contract data for accuracy in support of



BECO's preparation and submittal of the FHWA DBE Report

FHWA SEMI-ANNUAL REPORT

CONTRACTORS & SUBCONTRACTORS



Aug 15

AGENCY



Sep 1

RETAINAGE REVISITED



1

FHWA Prompt Payment and Return of Retainage National Audit Review of ADOT's DBE Program in 2020



2

FHWA provides BECO an Audit Review Report in September 2021. Some federally-funded contracts are found to be in non-compliance with Retainage and Completion of Work requirements.



3

BECO begins the process of informing the Local Public Agencies via Memo distribution of the non-compliance issue.



4

Some agencies reach out to ADOT Director, leading to several meetings, in which ADOT's decision to not allow the holding of retainage was reconfirmed.



5

Followed by discussions, the LPA Prompt Payment & Payment Reporting Provisions are updated to provide more clarity on the subject of retainage.

UPDATED LPA PROMPT PAYMENT & PAYMENT REPORTING PROVISIONS

SANCTIONS

CONSTRUCTION AND PROFESSIONAL SERVICES/DESIGN CONTRACTS PROMPT PAY AND PAYMENT REPORTING PROVISIONS

** FOR USE ON LPA FEDERAL AID PROJECTS **

(07/24/2023)

MEASUREMENTS AND PAYMENT:

(A) Partial Payments:

If satisfactory progress is being made, the contractor shall receive a payment based on the amount of work completed. Progress payments may be made by the LPA/Subrecipient Procurement Office to the contractor on the basis of an approved estimate of the work performed during a preceding period of time. The progress payments will be paid on or before 14 days after the estimate of the work is approved. The estimate of the work will be deemed received by the LPA/Subrecipient Procurement Office on submission to the person designated by the LPA/Subrecipient Procurement Office for the submission, review or approval of the estimate of the work. The LPA/Subrecipient Procurement Office by mutual agreement may make progress payments on contracts of less than 90 days and will make monthly progress payments on all other contracts. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under the contract may include payment for material and equipment.

An estimate of the work submitted will be deemed approved and certified for payment seven days from the date of submission unless before that time the LPA/Subrecipient Procurement Office or Designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under contract. The contractor shall work with the LPA/Subrecipient or the LPA/Subrecipient Designee to finalize monthly estimate. The progress payments will be paid on or before 14 days after the estimate of the work is certified and approved in accordance with Arizona Revised Statutes Section 34-221.

The contractor shall pay to the contractor's subcontractors or material suppliers and estimator's subcontractor or material supplier, within 15 days of the date of payment, the respective amounts allowed for the work performed by the subcontractors, to the

may materially alter the rights of any contractor, receive prompt and timely payment.

recipient Procurement Office in writing requesting the Subrecipient Procurement Office in writing within 15 days of the date of payment made to the contractor.



(a) Sanctions for Inadequate Reporting:

For each Reportable Contract on which the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain \$1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to \$2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.



(a) Sanctions for Inadequate Reporting:

For each month that the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain \$5,000 as sanctions from the monies due to the contractor. After 90 consecutive days of non-reporting, the sanctions will increase to \$10,000 for each subsequent month which the contractor fails to report until the information is provided. These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

AGENCY-SUBMITTED QUESTIONS

"Does the Agency have a plan for training DBE staff on managing federally funded projects?"

This was not on the previous checklist, is the reference to "DBE staff" related to agency staff, consultant staff, or both

Both. It is a federal requirement that anyone who touches federally funded projects receives the relevant training

"Monitor DBE utilization on projects, notifying ADOT BECO when aware of a potential issue that may affect DBE commitments made at award."

CA Agency follows the DBE Change/Termination process for notification. For other issues, this is tracked in the LPA DBE Reporting System and should not have a requirement to duplicate this process.

"Notify ADOT PM and ADOT BECO of contract award or rejection of bids."

CA Agencies report and send all information through ADOT PM. CA Agencies already send a Bid Analysis to ADOT PM notifying them of this information. This goes against current practice, and should be revised to CA's send Bid Analysis to ADOT PM, ADOT PM forwards information to ADOT BECO. Current practice was put in place so ADOT PM is fully aware of any issues. By deviating from this we will have different groups with different information. See Communication Plan number 5.

Please simply cc the LPA Contractor Compliance Inbox.
Remember to add this step to your updated procedures for BECO approval

Whenever there are any serious issues related to DBE Requirements on LPA projects, BECO should be notified.



AGENCY-SUBMITTED QUESTIONS

Do the DBE Procedures require the agency to: Ensure receipt of Bid Verification Notice from ADOT BECO before contract award. The 12 th line item/box “Ensure receipt of Bid Verification Notice from ADOT BECO before contract award”.

The BECO Construction Checklist does not identify how long BECO has to review and respond. We cannot hold Council Approval Date based on their negligence?? There should be a limit. I go by 5 working days. If BECO does not concur within 5 working days, I move forward with the Council process.

Not waiting for BECO concurrence put your federal dollars at risk. This is a federal requirement.

*Side Note: It should not be called “LPA DBE System”, a) it is also “Payment Reporting” for all DBE and non DBE and b) it is also “Prompt Pay Verification”, c) the name confuses companies who are NOT DBEs. Call it “Payment Reporting System”.

Agreed, BECO is already discussing this internally and determine an acronym. Any suggestions?

Will there be an update to the DBE Checklist with the new requirements provided by BECO?

Yes, hopefully in 2023.

BECO reviews and provides concurrence via Bid Verification Notice within 5 business days from receipt of Agency’s email with all relevant documents attached

DBE DOCUMENT SUBMITTALS

a. On-Line Bidders List - All bidders complete an On-Line Bidders List at [AZ_LTBAC](#) and submit the corresponding Bidders List Email Confirmation Notice to the Agency by 4:00 pm on the 5th calendar day after bids are opened. LPA EPBSC Section 31.0

b. DBE Intended Participation Affidavit - Individual Form 3125C Apparent Low Bidder (ALB) submits one form for each DBE by 4:00 pm on the 5th calendar day after bids are opened.

c. DBE Intended Participation Affidavit - Summary Form 3136C ALB submits to Agency by 4:00 pm on the 5th calendar day after bids are opened.

All bidders are encouraged to submit affidavits and must use the most current forms obtained from Agency.

Bidders will identify all DBE firms at all tiers intended to be used on the project corresponding to the DBE Intended Participation Affidavits submitted for each DBE form LPA EPBSC Section 31.0

Note: To be considered responsible and eligible for award of a contract, a bidder who has indicated in its bid that it met the DBE

a. Agency collects all notices from all the Bidders List respondents.

b. Agency receives and checks intakes on 5th calendar day security and cost bid verification to:

c. See b. above.

Agency reviews ALL (submittals) after AS bid opening. If ALL subsequent low bid the list of bidders is no responsive bid rejection of all bid

After review, Agency Bidders List Notice and email within 2 LPA Contractor.Com

RESOURCES



ADOT LPA
Website



LPA DBE Tips & Errors
for DBE Affidavits



ADOT LPA Website:
Guides & Resources



AZUTRACS



ADOT DBE
Program Plan



49 CFR
Part 26



Email:
Melanie
Peterson



Email:
Sharon
Bova



Email:
LPA Contractor
Compliance Inbox

ADOT'S NONDISCRIMINATION NOTICE TO THE PUBLIC

The Arizona Department of Transportation (ADOT) hereby gives public notice that it is the Agency's policy to assure full compliance with Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990 (ADA), and other related authorities in all of its programs and activities. ADOT's Title VI and ADA Programs require that no person shall, on the grounds of race, color, national origin, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. Any person, who believes his/her Title VI or ADA rights have been violated, may file a complaint. Any such complaint must be in writing and filed with the ADOT Civil Rights Office within one hundred eighty (180) days following the date of the alleged discriminatory occurrence. For additional information about ADOT's Civil Rights programs and the procedures to file a complaint contact ADOT Civil Rights Office via the information listed below:

KRYSTAL SMITH ADA/TITLE VI NONDISCRIMINATION PROGRAM COORDINATOR
KSMITH2@AZDOT.GOV

ADOT Civil Rights Office
206 S 17th Avenue, Mail Drop 155-A, Phoenix, AZ 85007
(602) 712-8946 azdot.gov CivilRightsOffice@azdot.gov