

CA Academy

DBE Compliance Requirements

Business Engagement & Compliance Office (BECO)

Melanie Peterson

**LPA/SR Program Manager
BECO**

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**Contractor & Field Compliance Manager
BECO**

February 25, 2021


Overview

- BECO “New” Staff
- DBE Goal Assurance Form
- Termination/Substitution/Reduction of Work
 - Commercially Useful Function
 - Certification of Final Payment
 - Prompt Payment
- Monthly Payment Audit Review (MPAR)

BECO "New" Staff



Kristina Collazo
DBE & OJT Compliance
Technician
BECO



Business Engagement and Compliance

Clear

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
GOAL ASSURANCE

The undersigned, fully cognizant of the requirements and of the goal established, hereby certifies that in the preparation of this bid for federal aid project:

ADOT TRACS No:

Agency Project No:

Project Name:

(CHECK ONE)

☐ The bidder has met the established DBE goal and arrangements with certified DBEs have been made prior to the submission of the bid.

OR

☐ The bidder has been unable to meet the established DBE goal prior to the submission of the bid and has made good faith efforts to do so.

THIS CERTIFICATE MAY NOT BE REVISED OR CORRECTED AFTER SUBMISSION OF THE BID.

If the bidder certifies that it has met the goal, the bidder cannot change its decision after submission of the bid and submit documentation of a good faith effort. If the bidder certifies that it has been unable to meet the goal and has made a good faith effort, the bidder cannot change its position after the submission of the bid and claim to have met or be able to meet the established goal.

In accordance with the DBE Special Provisions, the bidder shall specify its DBE participation on the "DBE Intended Participation Affidavit", or provide documentation of its good faith efforts, by 4:00 p.m. on the fifth calendar day following the bid opening. The bidder shall obtain the required affidavit from the

Insert Agency Name

Print Name of Firm

Print Name of Authorized Officer of Firm

Signature of Authorized Officer of Firm

Title

Date

DBE Goal Assurance Form 3102C Race Conscious (RC) Only

DBE Goal Assurance Form 3102C (RC Only)

CONTRACTOR *Responsibilities*


- Each bidder must identify:
 - **meets** the DBE goal or
 - **does not meet** the DBE goal, but will provide Good Faith Effort (GFE) documentation
- **Must be submitted with the bid**
- **Cannot change position after submittal**

DBE Goal Assurance Form 3102C (RC Only)

AGENCY

Responsibilities

Ensures form is with the bid
and complete, in order to
consider the bidder
responsive



-Select Agency-

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

TERMINATION/SUBSTITUTION/REDUCTION (TSR) REQUEST

Clear Form

Contract/TRACS No.: _____ Federal #: _____ Task Order: _____

Prime: _____ DBE Firm: _____

Requestor: _____ Email: _____ Phone Number: _____

Type of request: ☐ Termination ☐ Substitution ☐ Reduction

1. Is this request due to an ADOT reduction of work?

☐ Yes, explain the change or reduction impact on DBE participation

☐ No, select below the fact(s) and the reason(s) for the request (see attached instructions).

DBE: ☐ Fails or refuses to execute written contract

☐ Fails or refuses to perform work in accordance with normal industry standards

☐ Fails or refuses to meet prime contractor's reasonable, nondiscriminatory bond requirements

☐ Becomes bankrupt, insolvent or exhibits credit unworthiness

☐ Is ineligible to work because of suspension or debarment proceedings

☐ Is not a responsible contractor

☐ Voluntarily withdraws from the project and provides to the Department written notice of its withdrawal

☐ Is ineligible to receive DBE credit for the type of work required

☐ Owner dies or becomes disabled resulting in inability to complete its work on the contract

☐ Other documented good cause (Attach documentation)

Attach a brief statement of facts describing the situation and any supporting documentation to substantiate selection above

2. Date determined the DBE is unwilling, unable or ineligible to perform: _____

3. Date of Written Notice to DBE: _____ *Attach notice with this request, along with the DBE response*

4. a. Original DBE affidavit amount: \$ _____ **b. Amount of work completed to date:** \$ _____

c. Remaining DBE amount: \$ _____

For DBE Substitution only, answer questions 5 thru 7:

5. Proposed DBE Name(s): _____

6. Proposed DBE dollar amount to be substituted: \$ _____

7. Projected date for substitute DBE to commence work: _____

Good Faith Effort Documentation to be submitted with this request or within 7 calendar days from approval of this request:

- DBE Affidavits and/or
- Other documentation to substantiate efforts made to replace the same amount of DBE work

All signatures must be obtained before request is submitted.

Prime Contractor Signature

Original DBE Subcontractor Signature

Agency RE/PM Signature

NECO LPA Form 3108C (Rev. 05/04/2020)

Date:

Date:

Date:

FOR BECO USE ONLY

Request is: Approved ☐ Not Approved ☐

BECO Representative: _____

Signature: _____

Date: _____

Termination/ Substitution/ Reduction of Work (TSR)

Termination/Substitution/Reduction of Work



Termination/Substitution/Reduction of Work

CONTRACTOR *Responsibilities*

- Applies to DBEs listed on DBE Affidavit
- [TSR Request Form](#) must be submitted to Agency
- Good Faith Effort (GFE), if applicable

Contractor's Notice to DBE to terminate/substitute/reduce work:

- Written notice to the DBE
 - DBE Response
 - Copies to Agency

Must be approved by the Agency, with BECO concurrence

Termination/Substitution/Reduction of Work

CONTRACTOR *Responsibilities*

Contractor's TSR Request to the Agency must include:

- [TSR Request Form 3108C](#)
- DBE's written response (if DBE responded)
- Additional documentation, as necessary

Termination/Substitution/Reduction of Work

AGENCY

Responsibilities

Agency reviews formal request and provides determination in writing to BECO

BECO reviews and provides guidance and concurrence, in writing

BECO must approve all DBE TSRs

Remedies available for non-compliance

Termination/Substitution/Reduction of Work

**TSR Good Faith Effort (GFE) is required,
even when the Agency eliminates a work item.**

Before the new DBE starts work,
Agency must approve DBE Affidavits and BECO must concur

or

Agency reviews and evaluates GFE,
makes determinations and notifies BECO for concurrence

Termination/Substitution/Reduction of Work

Before the new DBE starts work,
the Agency must approve DBE Affidavits and BECO must concur

ADOT ARIZONA DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
TERMINATION/SUBSTITUTION/REDUCTION (TSR) REQUEST

Contract/TRACS No.: _____ Mod: _____ Task Order: _____
 Prime: _____ DBE Firm: _____
 Requestor: _____ Email: _____ Phone Number: _____

Type of request: ☐ Termination ☐ Substitution ☐ Reduction

1. Is this request due to an ADOT reduction of work?
☐ Yes, explain the change or reduction impact on DBE participation
☐ No, select below the fact(s) and the reason(s) for the request (see attached instructions).

DBE: ☐ Fails or refuses to execute written contract
☐ Fails or refuses to perform work in accordance with normal industry standards
☐ Fails or refuses to meet prime contractor's reasonable, nondiscriminatory bond requirements
☐ Becomes bankrupt, insolvent or exhibits credit unworthiness
☐ Is ineligible to work because of suspension or debarment proceedings
☐ Is not a responsible contractor
☐ Voluntarily withdraws from the project and provides to the Department written notice of its withdrawal
☐ Is ineligible to receive DBE credit for the type of work required
☐ Owner dies or becomes disabled resulting in inability to complete its work
☐ Other documented good cause (Attach documentation)

Attach a brief statement of facts describing the situation and any supporting documents.

2. Date determined the DBE is unwilling, unable or ineligible to perform work: _____
 3. Date of Written Notice to DBE: _____
 4. a. Original DBE affidavit amount: \$ _____
 b. Remaining DBE amount: \$ _____
 c. Remaining DBE amount: \$ _____

For DBE Substitution only, answer:



_____, along with the DBE response
 completed to date: \$ _____

_____ work: _____

Submitted with this request or within 7 calendar days from approval of this request:

_____ to substantiate efforts made to replace the same amount of DBE work

_____ signed before request is submitted.

FOR BECO USE ONLY	
Request is:	Approved <input type="checkbox"/> Not Approved <input type="checkbox"/>
BECO Representative:	_____
Signature:	_____
Date:	_____



Termination/Substitution/Reduction of Work

Contractor submits Good Faith Effort (GFE) documentation within **7 days** of TSR request approval by the Agency with BECO's concurrence

ADOT ARIZONA DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
TERMINATION/SUBSTITUTION/REDUCTION (TSR) REQUEST

Contract/TRACS No.: _____ Mod.: _____ Task Order: _____
Prime: _____ DBE Firm: _____
Requestor: _____ Email: _____ Phone Number: _____
Type of request: ☐ Termination ☐ Substitution ☐ Reduction

1. Is this request due to an ADOT reduction of work?
☐ Yes, explain the change or reduction impact on DBE participation
☐ No, select below the reason(s) for the request (see attached documents):
DBE: ☐ fails or refuses to execute written contract
☐ fails or refuses to perform work in accordance with normal industry standards
☐ fails or refuses to meet prime contractor's reasonable, non-discriminatory bond requirements
☐ becomes bankrupt, insolvent or exhibits credit unworthiness
☐ is ineligible to work because of suspension or debarment
☐ is not a responsible contractor
☐ voluntarily withdraws from the project and provides written notice of its withdrawal
☐ is ineligible to receive DBE credit for the type of work performed on the contract
☐ owner dies or becomes disabled resulting in loss of its work on the contract
☐ other documented good cause

Attach a brief statement of facts describing the circumstances leading to the request to substantiate selection above

2. Date determined the DBE is unworkable, _____ with this request, along with the DBE response

3. Date of Written Notice to DBE: _____

4. a. Original DBE Affidavit amount: \$ _____ work completed to date: \$ _____
c. Remaining DBE amount: \$ _____

For DBE Substitution only, answer questions 5 thru 7:

5. Proposed DBE Name(s): _____

6. Proposed DBE dollar amount to be substituted: \$ _____

7. Projected date for substitute DBE to commence work: _____

Good Faith Effort Documentation to be submitted with this request or within 7 calendar days from approval of this request:

- DBE Affidavits and/or
- Other documentation to substantiate efforts made to replace the same amount of DBE work

All signatures must be obtained before request is submitted.

FOR BECO USE ONLY

Request is: ☐ Approved ☐ Not Approved ☐

BECO Representative: _____ Signature: _____ Date: _____

Prime Contractor Signature: _____ Date: _____

Original DBE Subcontractor Signature: _____ Date: _____

ADOT RE/PM Signature: _____ Date: _____



Termination/Substitution/Reduction of Work

DBE TSR Sanctions



Agency considers sanctions when the contractor fails to follow the TSR process for a DBE listed on the affidavits



Follow the TSR requirements to stay in compliance; avoid sanctions

Commercially Useful Function (CUF)

Commercially Useful Function (CUF)

CONTRACTOR

Responsibilities

AGENCY

Responsibilities

CUF decisions may be appealed by contractor or DBE to BECO

Commercially Useful Function (CUF)

CUF Red Flags Job Aid




Commercially Useful Function (CUF)

Red Flags

A DBE is responsible for the execution of a distinct element of work and carries out its responsibilities by actually performing, managing, and supervising the work.

Management

- Is the DBE scheduling work operations?
- Is the DBE ordering equipment and supplies?
- Is the DBE preparing and submitting certified payrolls?
- Is the DBE responsible for hiring and firing employees?

A "no" response requires further inquiry to assess if a DBE is separate and independent from the prime contractor.

Materials

- Did the DBE order its own materials?
- Are invoices for the materials and supplies addressed to the DBE?
- Who paid for the materials? Is payment made by a joint check bearing the DBE's and the prime contractor's signatures?

If it is unclear that the DBE is responsible for ordering materials and supplies, further inquiry and follow-up is required.

Workforce

- Are employees moving between the DBE and the prime contractor?
- Are employees listed on the DBE and on the prime contractor's payroll?
- Does the DBE share office space with the prime contractor?
- Is there a discrepancy between the company identification badge and the information provided by the employee labor interviews?

A "yes" response requires further inquiry and follow-up to determine if a DBE is managing its own workforce.

Equipment

- Who is the owner of the equipment?
- Observe equipment and assess signage. Is there a sign over an original sign?
- Who is operating the equipment? Is the operator an employee of the DBE?
- What is reflected on the daily notes? Does the inspector identify the equipment used by the DBE?

If it is unclear that the DBE has control over the equipment, further inquiry and follow-up is required.

Performance

- Does the DBE have a contract with the prime contractor?
- Has the DBE performed 30% of the overall contract?
- Is a portion of the DBE's work performed by the prime contractor?

If it is unclear that the DBE is performing the work specified in its agreement with the prime contractor, further inquiry and follow-up is required.

**Please notify the
ADOT Business Engagement & Compliance Office (BECO)
or the USDOT Office of Inspector General
to report possible fraudulent activity:**

ADOT Business Engagement & Compliance Office (BECO):
Telephone: (602) 712-7761
Email: ContractorCompliance@adot.gov

**US Department of Transportation -
Office of Inspector General (OIG):**
Telephone: (800) 7424-907
Email: hotline@oig.dot.gov

Commercially Useful Function (CUF)

To meet the CUF requirement, a DBE must perform, manage and supervise the work



Perform



Manage



Supervise

Commercially Useful Function (CUF)

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

DBE Firm

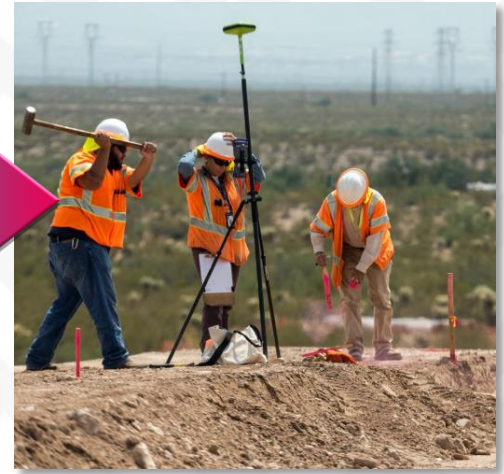



*DBE
Credit*



Commercially Useful Function (CUF)

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





CERTIFICATION OF FINAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PAYMENTS
Construction Contracts
(Submit one form for each DBE involved in the contract)

The undersigned contractor on **Agency Project No:** **ADOT TRACS No:** hereby, certifies that full payment was made, to the firm indicated for material and/or work performed under this project's contract as follows:

DBE FIRM AZ UTRACS Vendor Registration #

Name of DBE Firm was paid the amount of

This certificate is made under Federal and State Laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contractor, all documentation supporting the contractor's position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS THAT THE STATEMENT MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor Company Name:

Check One: ☐ Prime Contractor ☐ Subcontractor

Name: **Title:**

Signature:

Date:

The undersigned subcontractor/supplier/manufacturer for the above named project hereby certified that payments were received and/or justification by contractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS THAT THE STATEMENT MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

DBE Firm Name:

Check One: ☐ Subcontractor/Supplier/Manufacturer ☐ Lower-tier Subcontractor/Supplier/Manufacturer

Name: **Title:**

Signature:

Date:

3110C - LPA 12.20.2016

Certification of Final DBE Payments (COP)

Certification of Final DBE Payments (COP)

CONTRACTOR

Responsibilities

AGENCY

Responsibilities

Agency sends a copy of COP to BECO for concurrence

Certification of Final DBE Payments (COP)

A completed and signed COP for each DBE on the project must be submitted by the contractor no later than **30 days** after final payment to DBE

ADOT
CERTIFICATION OF FINAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PAYMENTS
Construction Contracts
(Submit one form for each DBE involved in the contract)

The undersigned Contractor on TRACS No. SZ123401C hereby certifies that full payment was made, to the firm indicated for material and/or work performed under this project's contract as follows:

DBE FIRM AZ UTRACS Registration # 12345
 Name of DBE Firm DBE Firm was paid the amount of \$2,500.00

This certificate is made under Federal and State Laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contractor, all documentation supporting the contractor's position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor Company Name: Contractor ABC
 Check One: ☐ Prime Contractor ☒ Subcontractor
 Name: John Smith Title: Title
 Signature: _____
 Date: 11/11/2011

 The undersigned subcontractor(s)/supplier(s)/manufacturer for the above named project hereby certifies that payments were received and/or justification by the contractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

DBE Firm Name: DBE Abcdefg
 Check One: ☒ Subcontractor/Supplier/Manufacturer ☐ Lower-tier Subcontractor/Supplier/Manufacturer
 Name: John Smith Title: Title
 Signature: John Smith
 Date: 11/11/2011



Final to DBE

Certification of Final DBE Payments (COP)

The \$ amount on the COP must match the final \$ amount in the LPA DBE system

ADOT
CERTIFICATION OF FINAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PAYMENTS
Construction Contracts
(Submit one form for each DBE involved in the contract)

The undersigned Contractor on TRACS No. 57123401C hereby certifies that full payment was made to the firm indicated for material and/or work performed under this project's contract as follows:

DBE FIRM AZ UTRACS Registration # 12345
 Name of DBE Firm DBE Firm was paid the amount of \$2,500.00

This certificate is made under Federal and State Laws concerning false statement. Supporting documentation is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contractor, all documentation supporting the contractor's position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Contractor Company Name: Contractor ABC
 Check One: ☐ Prime Contractor ☒ Subcontractor
 Name: John Smith Title: Title

Signature: _____
 Date: 11/11/2011

The undersigned subcontractor/supplier/manufacturer for the above named project hereby certifies that payments were received and/or justification by the contractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

DBE Firm Name: DBE ABCdefg
 Check One: ☒ Subcontractor/Supplier/Manufacturer ☐ Lower-Order Subcontractor/Supplier/Manufacturer
 Name: John Smith Title: Title

Signature: John Smith
 Date: 11/11/2011

UTRACS
 LPA DBE System

Compliance Audit Summary - November 2018 and Totals to November 2018

	November 2018		Percent	Totals to November 2018	
	Payments			Payments	
Contract Award Value & Goal					\$26,976
Paid to Prime	\$13,707.85				\$24,278
For Credit Payments - Prime + Subs	\$13,707.85	0.000%			\$24,278
For Credit Payments - Prime	\$13,707.85	0.000%			\$24,278
For Credit Payments - Subs	\$0.00	0.000%			\$0
For Credit to DBE Goal	\$13,707.85	100.000%			\$24,278

Mark Unconfirmed Sub Entries as Confirmed \$2,500.00

Extend Reporting Deadline By Two Weeks From Today

Prime Contractor - November 2018

Prime Contractor	Cert	Inc. in Goal for Period	This Period	Prime's Share This Period	Total to Nov 2018	Prime's Share Total to Nov 2018	Contractor's Share
	DB (C)	DBE	\$13,707.85	\$13,707.85	\$24,278.34	\$24,278.34	

Click prime name to view payment history for this contract. Click contact person's name to send them a message.

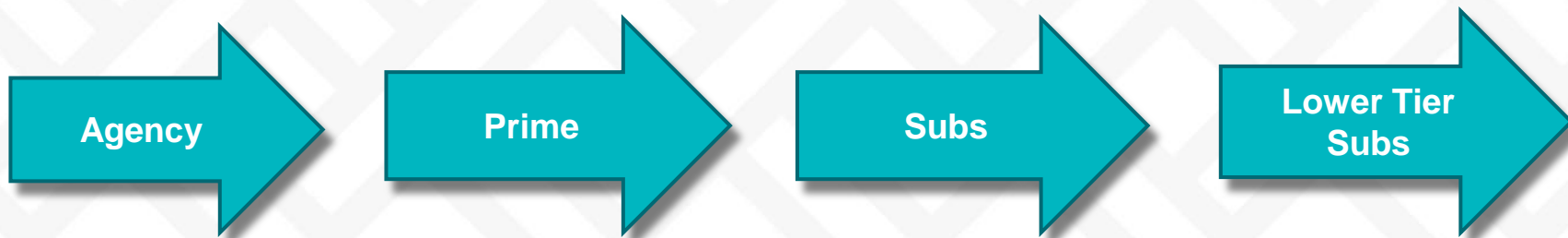
Subcontractors - November 2018

Subcontractor	Cert	Type	Inc. in Goal for Period	This Period	Confirmed By Sub	Total Payments to June 2017
1 [Redacted]	DB	Sub	No	Not included in audit Add to audit		\$0.00
1 DBE ABCDEFG [Info] John Smith jsmith@abcdefg.com P 602-123-4567	DBE	Sub 100%	DBE	Not included in audit Add to audit		\$2,500.00

Click subcontractor name to view payment history for this contract. Click contact person's name to send them a message.

Prompt Payment Requirements

Prompt Payment



Payment Detail(s)



Pay on Time



Protect
Jobs



Promote
Growth



Prevent
Insolvencies

Prompt Payment Monitoring

Request For Information (RFI)

ADOT ARIZONA DEPARTMENT OF TRANSPORTATION

SUBCONTRACTOR/LOWER TIER
PROMPT PAYMENT REQUEST FOR INFORMATION

Section A – Fill-in all fields		
Project Information		
Date:	TRACS/Project#:	Estimate Month:
Prime Contractor	Subcontractor	Lower Tier Subcontractor
Contact Name & Title	Contact Name & Title	Contact Name & Title
Phone	Phone	Phone
Email	Email	Email

*Remedies can be considered
for non-compliance*



Payment Reporting

Prime reports payments (including \$0) in the LPA DBE System for all subs, by **15th of every month**



Subs must confirm payments no later than **45 days**

Payment Reporting

Agency monitors for compliance in the LPA DBE System



Prime Contractor	Total to September 2020	Prime's Share Total to September 2020	Contracted Percent	Actual Percent
...	\$128,685,105.82	\$84,746,463.53	49.973%	65.856%
...	\$175,317.75	\$602,393.21	0.181%	0.136%
...	\$0.00	\$0.00	0.033%	0.000%
...	\$3,835.00	\$0.00	0.002%	0.003%

Remedies available for non-compliance

MPAR

Monthly Payment Audit Review

MPAR for CAs

At the beginning of the year an email was sent out to the CAs with information and with a guide on how to implement your own Monthly Payment Audit Review.



Resources

LPA Website:

<https://azdot.gov/business/business-engagement-and-compliance/lpa-subrecipients>

For DBE Compliance and other questions for BECO, try out the new “BECO Connects” Form:

https://docs.google.com/forms/d/e/1FAIpQLSfKcs2JbY-yEnzUbQyGTXeKFYJGX9e-Vwl_LXGFLPGtZFJm_g/viewform

Short video on DBE & Payment Requirements for Primes: <https://www.youtube.com/watch?v=vk-0aq3VKsl&feature=youtu.be>

Contact:

Email for Bid Verifications, COPs and other time-sensitive items: lpacontractorcompliance@azdot.gov

DBE Goal Assessment Help: dbcontractgoals@azdot.gov

Direct Contact for LPA Program Manager: Melanie Peterson at mpeterson2@azdot.gov