



WASCITO

CIVIL RIGHTS TRAINING SYMPOSIUM | AUSTIN 2019



DBE Best Practices – Next Level DBE Compliance Monitoring

March 6, 2019



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Best Practices in Monitoring DBE Program Compliance

- Commercially Useful Function (CUF) Reviews
- Monitoring DBE Goal Commitments
- Enforcement Mechanisms
- Design Build Projects
- Local Government Monitoring and Reporting

CUF Reviews

CUF Forms Revised and Developed

- Included a time frame in which the CUF review must be performed after a DBE initiates work on a project and by which date the CUF review must be completed.
- Separated sections of the CUF form to be completed by the inspectors and record keepers.
- Configured the form to populate sections applicable to the work performed by the DBE.

According to DOT, recipients must perform monitoring of every contract on which DBE participation is claimed, including contracts for professional services.

- Developed a CUF form for professional and scientific services.

CUF Form 2182

CUF Form 2182

Page 1



Disadvantaged Business Enterprise (DBE) Program Commercially Useful Function (CUF)

Form 2182
(Rev. 11/18)
Page 1 of 7

Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.

TxDOT field staff will perform CUF reviews on DBEs. A minimum of one CUF review must be performed for each DBE on each project with or without a DBE goal. With the assistance of the DBE Coordinator, a CUF review should be completed for each DBE by the field/office staff within 60 days of initiation. The CUF review should be submitted with all supporting documentation (invoices, payroll, pictures, equipment, DWR and list of employees). The Area Office will submit the completed CUF form to the DBE Coordinator, who must review and finalize within 30 days. A CUF review must be conducted to assess performance and compliance should be monitored throughout the course of the project. The following questions on this form should be answered by the DBE Owner or DBE Superintendent.

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Sections labeled "Part I" should be completed by field staff. Sections with "Part II" should be completed by office staff.

needed.)

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Management

Yes No N/A

Part I (to be completed by field staff).

Part I (to be completed by field staff):

ther non-DBE contractor?

Has the DBE owner been present on the jobsite?

Who is scheduling work activities, material deliveries and other requirements for the DBE's work?
(Include name and titles below.)

| Name | Title |
|------|-------|
| | |
| | |
| | |
| | |
| | |

Did the DBE subcontract any items or portions of the work to any other firm?

If yes, what percentage was subcontracted?

Name of firm doing subcontracted work:

Is the subcontractor a DBE?

Part II (to be completed by office staff):

Part II (to be completed by office staff):

(Attach equipment list, ownership documents, and rental and lease agreements for equipment being used.)

If leased, who is it leased from?

CUF Form 2182 Configured



Disadvantaged Business Enterprise (DBE) Program Commercially Useful Function (CUF)

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Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.

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Sections labeled "Part I" should be completed by field staff. Sections with "Part II" should be completed by office staff.

DBE firm is performing as: Prime Contractor Subcontractor Tier Subcontractor Hauler

Provide a brief description of the DBE's scope of work. *(Obtain copy of Subcontract Agreement and/or Purchase Order if needed.)*

CUF Form 2182 Configured

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| Haulers | Yes | No | N/A |
|---|--------------------------|--------------------------|--------------------------|
| Part I (to be completed by field staff): | | | |
| Do haul tickets indicate work is performed by DBE? (Attach copies of Haul Tickets.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Do the trucks on the work site belong to the DBE? (Obtain and attach verification of truck ownership in the name of the DBE.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Part II (to be completed by office staff): | | | |
| If leased, are the lease agreement terms in compliance with DBE requirements? (Obtain and attach copies of lease agreements.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

| Commensurate | Yes | No | N/A |
|---|--------------------------|--------------------------|--------------------------|
| Part II (to be completed by office staff): | | | |
| Is payment received by the DBE commensurate with the work being performed? (Review the payment information on the monthly progress report form or payment entry in DMS.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Comments

| Commercially Useful Function Determination | Yes | No |
|---|--------------------------|--------------------------|
| Based on the above, is the DBE an independent business, executing a distinct element of work, and actually performing, managing, and supervising the work specified in the DBE's contract? (If "No" proceed to "Non-Commercially Useful Function Determination.") | <input type="checkbox"/> | <input type="checkbox"/> |
| Date of Review: | <input type="text"/> | |

Signatures and dates below must be included prior to submission.

Reviewer Signature: Date:

Printed Name: Title:

Reviewer Signature: Date:

Printed Name: Title:

DDC Signature: Date:

Printed Name: Title: DBE Coordinator

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For any question marked "No," please explain in the "Comments" section at the end of the form.

Materials Yes No N/A

Part I (to be completed by field staff):

Is the DBE contracted to furnish and install a contract item? Yes No N/A

Who makes the arrangements for the delivery of materials?

Who schedules the delivery of materials?

Part II (to be completed by office staff):

Are joint checks being used? (Obtain and attach TxDOT Joint Check Approval Form [2178] and verify approval. Attach copies of cancelled checks.) Yes No N/A

Who are the parties identified as payable to?

Who are the material invoices made out to? (Obtain and attach copies of invoices, Material on Hand Documents, cancelled checks.)

In whose name are the materials shipped? (Obtain and attach copies of shipping documents, Bills of Ladings, etc.)

Workforce Yes No N/A

Part I (to be completed by field staff):

Does the DBE crew know which company they work for? Yes No N/A

Part II (to be completed by office staff):

Attach a list with the names and titles of the DBE's crew present during the review.

(Obtain and attach copies of certified payrolls for verification.)

Performance Yes No N/A

Part I (to be completed by field staff):

Does the DBE appear to have control over methods of work on its contract items? Yes No N/A

Has any other contractor performed any amount of work specified in the DBE subcontract? Yes No N/A

If yes, did the contractor have TxDOT's prior written approval before self-performing the work? Yes No N/A

Is the DBE performing at least 30% of the work? Yes No N/A

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Haulers

Yes No N/A

Part I (to be completed by field staff):

Do haul tickets indicate work is performed by DBE? (Attach copies of Haul Tickets.)

Yes No N/A

Do the trucks on the work site belong to the DBE? (Obtain and attach verification of truck ownership in the name of the DBE.)

Yes No N/A

Part II (to be completed by office staff):

If leased, are the lease agreement terms in compliance with DBE requirements? (Obtain and attach copies of lease agreements.)

Yes No N/A

Commensurate

Yes No N/A

Part II (to be completed by office staff):

Is payment received by the DBE commensurate with the work being performed?

Yes No N/A

(Review the payment information on the monthly progress report form or payment entry in DMS.)

Comments

Commercially Useful Function Determination

Yes No

Based on the above, is the DBE an independent business, executing a distinct element of work, and actually performing, managing, and supervising the work specified in the DBE's contract? (If "No" proceed to "Non-Commercially Useful Function Determination.")

Yes No

Date of Review:

Signatures and dates below **must** be included prior to submission.

Reviewer Signature:

Date:

Printed Name:

Title:

Reviewer Signature:

Date:

Printed Name:

Title:

DDC Signature:

Date:

Printed Name:

Title: DBE Coordinator

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Non-Commercially Useful Function Determination

(The DBE has 10 days from the date it receives the letter to rebut these findings.)

If a CUF is not being performed by the DBE subcontractor, what action was taken to correct the deficiency?

Yes No

Did the action taken correct the deficiency?

Date of Review:

Date of Correction:

Signatures and dates below **must** be included prior to submission.

Reviewer Signature:

Date:

Printed Name:

Title:

Reviewer Signature:

Date:

Printed Name:

Title:

DDC Signature:

Date:

Printed Name:

Title: DBE Coordinator

[Contact/Help](#)

CUF Form 2183

CUF Form 2183

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Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.

District field staff will perform CUF reviews on DBE subcontracts and Material Suppliers; and perform a minimum of one review for each DBE for each project with and without a DBE goal. The review should be conducted when the DBE first begins work, and compliance should be monitored through the course of the project.

County: Project ID:
Contract-CSJ: Review Date:
DBE Company Name: Reviewer Name:
DBE Company Owner: Reviewer Title:

Professional Services

DBE firm is performing the following services:

| | | | |
|--|--|---|---|
| <input type="checkbox"/> Architecture | <input type="checkbox"/> Engineering | <input type="checkbox"/> Landscape Architecture | <input type="checkbox"/> Private Consulting |
| <input type="checkbox"/> Real Estate Appraisal | <input type="checkbox"/> ROW Acquisition | <input type="checkbox"/> Surveying | <input type="checkbox"/> Other <input type="text"/> |

Scientific Services

DBE firm is performing the following services:

| | | |
|---|---|----------------------------------|
| <input type="checkbox"/> Archeology | <input type="checkbox"/> Architectural Historian Services | <input type="checkbox"/> Biology |
| <input type="checkbox"/> Environmental Coordination and Documentation | <input type="checkbox"/> Geology | |
| <input type="checkbox"/> Historian Services | <input type="checkbox"/> NEPA Compliance Advising | |
| <input type="checkbox"/> Other <input type="text"/> | | |

Please provide a brief description of the DBE's scope of work. (Obtain a copy of the Subcontract Agreement and/or Purchase Order and submit with this form.)

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Page 2

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Performing Yes No

- Does the DBE firm have the required expertise for the subcontracted work? Yes No
- Is the DBE firm working without assistance from the prime contractor or another subcontractor? Yes No
- Is the DBE firm performing at least 30% of its work? Yes No

Managing Yes No

- Is the DBE scheduling work activities and other related actions for performance of the work? Yes No
- Is the DBE managing the work it has been subcontracted to perform? Yes No
- Is the DBE submitting invoices and payroll? *(Attach a sample of invoices and the certified payroll.)* Yes No

Supervising Yes No

- Does the DBE firm have an experienced Project Manager on the project? Yes No
- If yes, please provide the Project Manager's name:
- Is the Project Manager a full-time employee? Yes No
- Is the DBE supervising its employees and their work? Yes No

Equipment Yes No

- Is the DBE only using equipment it owns, rents, or leases? *(Attach equipment list and any rental/lease agreements.)* Yes No

Commensurate Yes No

- Is payment received by the DBE commensurate with the work being performed? Yes No

CUF Comments/Observations

CUF Form 2183

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Commercially Useful Function Determination

| | Yes | No |
|--|--------------------------|--------------------------|
| Based on the above, is the DBE an independent business, executing a distinct element of work, and actually performing, managing, and supervising the work specified in the DBE's contract? (If "No" proceed to "Non-Commercially Useful Function Determination") | <input type="checkbox"/> | <input type="checkbox"/> |

Date of Review:

Reviewer Signature: Date:
Printed Name: Title:

Reviewer Signature: Date:
Printed Name: Title:

DDC Signature: Date:
Printed Name: Title: DBE Coordinator

Non-Commercially Useful Function Determination (The DBE has 10 days from the date it receives the letter to rebut these findings.)

If a CUF is not being performed by the DBE subcontractor, what action was taken to correct the deficiency?

| | Yes | No |
|--|--------------------------|--------------------------|
| Did the action taken correct the deficiency? | <input type="checkbox"/> | <input type="checkbox"/> |

Date of Review: Date of Correction:

Reviewer Signature: Date:
Printed Name: Title:

Reviewer Signature: Date:
Printed Name: Title:

DDC Signature: Date:
Printed Name: Title: DBE Coordinator

[Contact/Help](#)

CUF Form 2669

CUF Form 2669

Page 1



Commercially Useful Function Review Material Supplier

Form 2669
(Rev. 11/18)
Page 1 of 8

Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.

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Project ID/CSJ: Prime Contractor:

County: DBE Firm:

District: DBE Representative Name:

DBE Contract Start Date: DBE Goal Commitment Dollar Amount:

DBE Contract End Date:

DBE Material Supplier is performing as (select all that apply): Manufacturer Regular Dealer Broker

DBE Material Supplier is performing as (select all that apply): Manufacturer Regular Dealer Broker

2. Is your firm providing materials and/or supplies to be used on the project to a firm other than the prime contractor? Yes No

If yes, provide the following:

| Name of Contractor | Primary Contact |
|--------------------|-----------------|
| | |
| | |

+ -

Please provide copies of the following:

- Your subcontract agreement or purchase order
- Your firm's price quotation to the prime and/or subcontractor for which you will supply materials and/or supplies
- Copies of cancelled checks for payments from the prime
- Invoices to the prime

3a. Explain your firm's process for negotiating and obtaining prices for materials and supplies.

3b. Please list the name and title of the individual(s) responsible for the acquisition of the materials and/or supplies.

CUF Form 2669

Page 2

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| Name | Title |
|------|-------|
| | |
| | |

4a. Please provide the following information for the supplier(s)/manufacturer(s) from whom you are receiving materials and/or supplies.

| Name | Title | Company | Email | Phone Number |
|------|-------|---------|-------|--------------|
| | | | | |
| | | | | |

Please provide recent samples of invoices from each supplier/manufacturer listed above, notating your firm's customer number.

4b. Please provide the dollar amount billed to the contractor by your firm: \$

4c. Please provide the dollar amount paid to your firm: \$

5a. Please provide the name and title of the individual(s) responsible for placing orders with the supplier/manufacturer.

| Name | Title |
|------|-------|
| | |
| | |

5b. Are all of the individuals listed above employed by your firm? Yes No

6a. Does your firm stock/inventory the materials required under contract as a normal part of your business? Yes No

Please provide a list of your current inventory.

6b. Where is project material coming from? Stock Supplemented from Stock Special Order

6c. Please provide the name and title of the individual(s) at your firm who is/are responsible for releasing the materials required under this contract.

| Name | Title |
|------|-------|
| | |
| | |

7a. Does your firm have the capability to deliver the materials or supplies? Yes No

7b. Is your firm delivering the materials or supplies? (Bulk Items) Yes No

7c. Please list the equipment your firm uses for distributing the material and/or supplies.

7d. For this project, which type of equipment is being used for delivery? (Please provide copies of the delivery tickets.)

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Owned Equipment Rented Equipment* Manufacturer* Delivery Service* Leased Equipment*

Picked up by Contractor/Subcontractor Other: _____

**Please provide copies of the rental, lease, or delivery agreements.*

7e. If leased, is it a long-term lease and not a lease specifically for the project? Yes No

8. Did the prime contractor, or another subcontractor, assist you with obtaining delivery equipment or with the financing of equipment listed in 7c? Yes No

9. How are your suppliers paid for the materials and/or supplies you are providing for this project?

By your firm By the prime or another subcontractor

Please provide copies of cancelled checks for materials and payments from the contractor.

| | |
|---|-------|
| _____ | _____ |
| Print Name of DBE Owner/Representative | Title |
|  | _____ |
| Signature | Date |

[Contact/Help](#)

CUF Form 2669

Page 4

Form 2669 (11/18)
Page 4 of 6

TxDOT Internal Use ONLY

For any question marked "No," please explain in the "Comments" section at the end of the form.

Materials Yes No N/A

Who makes the arrangements for the delivery of materials?

Who schedules the delivery of materials?

Are joint checks being used? (Obtain and attach TxDOT Joint Check Approval Form (2178) and verify approval. Attach copies of cancelled checks.)

Regular Dealer Goal Credit

Does the DBE have an established storage facility and inventory?

Yes No N/A

Is the quantity and quality of the materials controlled by the DBE?

Who is delivering and unloading the material?

Manufacturer Goal Credit

Does the manufacturer purchase the raw material used in its plan? (Obtain and attach copies of invoices, shipping documents, and Bills of Lading.)

Yes No N/A

Is the manufacturer business's primary function to manufacture construction products?

Who makes the arrangements for the delivery of materials?

(Review the payment information on the monthly progress report form or payment entry in DMS.)

Comments

CUF Form 2669

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Page 6 of 8

Commercially Useful Function Determination

Yes No

Based on the above, is the DBE an independent business, executing a distinct element of work, and actually performing, managing, and supervising the work specified in the DBE's contract? (If "No" proceed to "Non-Commercially Useful Function Determination.")

Date of Review:

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Printed Name: Title:

Reviewer Signature: Date:

Printed Name: Title:

DDC Signature: Date:

Printed Name: Title: DBE Coordinator

Non-Commercially Useful Function Determination

(The DBE has 10 days from the date it receives the letter to rebut these findings.)

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Yes No

Did the action taken correct the deficiency?

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Printed Name: Title:

Reviewer Signature: Date:

Printed Name: Title:

DDC Signature: Date:

Printed Name: Title: DBE Coordinator

CUF Project Dashboard – District Report

CUF Project Dashboard – Contract Report

CUF Reviews Project Dashboard

Date Run: 2/21/2019 2:37:30 PM

Contract Status: Open
 District Office: Wichita Falls District
 Contract Number: 07173249 - 0043-09-130 WICHITA FALLS AO
 CUF Review Status: Yes, No, None Selected
 Compliance Officer: Cymantha Cato, Mark Wilson

Counts for All Reported Districts based on Selection Criteria

Number of Contracts: 1
 Total Number of DBEs on Projects: 4
 Total Number of Completed CUF Reviews: 4
 Total Number of Incomplete CUF Reviews: 0

Wichita Falls District

Number of Contracts: 1
 Total Number of DBEs on Projects: 4
 Total Number of Completed CUF Reviews: 4
 Total Number of Incomplete CUF Reviews: 0

| Contract Number | CSJ | Prime | DBE Subcontractor | RC/RN | CUF Complete? (Y/N) | Date Completed | Compliance (Y/N) |
|-----------------|-----------|--------------------------------|--|-------|---------------------|----------------|------------------|
| 07173249 | 004309130 | Coppell Construction Co., Inc. | | | | | N |
| 07173249 | 004309130 | | BOWMAN ENGINEERING & CONSULTING, INC. | RC | Y | 4/25/2018 | Y |
| 07173249 | 004309130 | | M & D Foundation Drilling Industries, Inc. | RC | Y | | Y |
| 07173249 | 004309130 | | Morris County Contractors, LLC | RC | Y | 4/24/2018 | Y |
| 07173249 | 004309130 | | Wolfe Construction Group, Inc. | RN | Y | 4/25/2018 | Y |

Monitoring DBE Goal Commitments

Monitoring DBE Goal Commitments

Pre-award Monitoring and Reviews

- Commitments
- Good Faith Efforts
- Bidders List

Post-award Monitoring

- Commitments
- Payments to DBEs
- Prompt Payment
- Terminations and Substitutions
- Site Reviews

Pre-award Monitoring and Reviews

Monitoring after a contract goal has been developed.

Did bidder meet good faith efforts by either:

- Meeting the contract goal, or
- Exercising adequate good faith efforts?

Did bidder provide an adequate Bidders List and include the following information?

- Name of firm
- Address of firm
- Firm's DBE Status
- Age of firm
- Annual Gross Receipts (range)

Pre-award Monitoring and Reviews

Commitment Analysis

DBE Utilization form

Meet or
exceed goal?

Verify DBE certified &
proper crediting

Adequate Good Faith Efforts

GFE
Documentation

Meet 26.53 and Appendix
A?

State DOT
GFE review?

Commitment vs. Goal

DBE Commitments
supersede the
DBE goal

Repeat for Change Orders
or Amendments if
necessary

Pre-award Monitoring and Reviews

Good Faith Efforts

Every proposal/bid that contains a contract goal requires Good Faith Efforts to meet the goal.

All proposals/bids require the following DBE information:

- Name and Address of DBE firm included
- Description of the work being performed by DBE
- Dollar amount committed to each DBE firm
- Bidder's commitment to use DBE firm listed
- Written confirmation from DBE firm that it is participating in work and amount listed

If the Bidder fails to meet the contract goal, Good Faith Effort documentation is required!

Pre-award Monitoring

| Item # | Mechanism Description |
|--------|--|
| 1. | Attendance at Pre-Bid, Pre-Proposal, or Pre-Statement of Qualifications (SOQ) Meeting |
| 2. | Advertisement of Opportunity: <ul style="list-style-type: none"> Names and dates of all advertisements Copies or proofs of publication Evidence that opportunity was solicited with sufficient time to allow response to IFB/RFP/Solicitation and or Task Order request |
| 3. | Written Notices to DBE Firms <ul style="list-style-type: none"> List of all certified DBEs solicited Copies of letters sent Documentation of follow-up performed |
| 4. | Work identified for DBE Firms <ul style="list-style-type: none"> Demonstrate that sufficient work was identified for DBE subcontractors |
| 5. | List of rejected DBEs and reasons for rejection <ul style="list-style-type: none"> Include name, address, and telephone number(s) Include price/quote if selected contractor is not a DBE |
| 6. | List of efforts made to interested DBEs in obtaining bonds, lines of credit, insurance, and information about scope of work, plans and specifications. |
| 7. | List any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services |
| 8. | List the minority/women agencies, organizations or groups contacted to provide assistance in contracting, reporting and using DBEs |
| 9. | Documentation that DBEs were negotiated with in good faith |

Post-award Monitoring

DBE Payment to Commitment Analysis

Award Analysis

- Are the award amounts equal to the commitment amounts?
- Is the scope of work the same?
- Is the DBE authorized to perform the work?

Payment Analysis

- Monitor payments to DBEs
- Are non-DBE subcontractors performing work?
- Are DBEs being paid promptly?

Monitor DBE Performance

- Is DBE performing the work authorized?
- Are payments tracking with commitments?
- Perform commercially useful function reviews

Post-award Monitoring

Additional DBE Monitoring

Terminations & Substitutions

- Are DBE terminations being properly conducted?
- Are substitutions meeting GFE requirements
- Is the same value of work being substituted?

DBE Crediting Analysis

- Are DBE invoices being reviewed for non-DBE lower tier subcontractors?
- Are non-DBE subcontractors performing work?
- Are suppliers and brokers being properly credited?

Subcontract Reviews

- Is scope and amount of work the same as commitment?
- Are DBE prompt payment terms included?
- Are other flow down terms included?

Post-award Monitoring

Termination and Substitution

Causes for termination or substitution of a DBE

DBE fails or refuses to execute a written contract

DBE fails or refuses to perform the work

DBE fails or refuses to meet prime's bond requirements

DBE becomes bankrupt, insolvent, or exhibits credit unworthiness

DBE is suspended or debarred

DBE is not a responsible contractor

DBE voluntarily withdraws from project

DBE is ineligible to receive DBE credit

DBE owner dies

Other documented good cause

Termination and Substitution

STEP 1

- Prime notifies DBE

STEP 2

- DBE responds to Prime

STEP 3

- Prime submits request to Agency

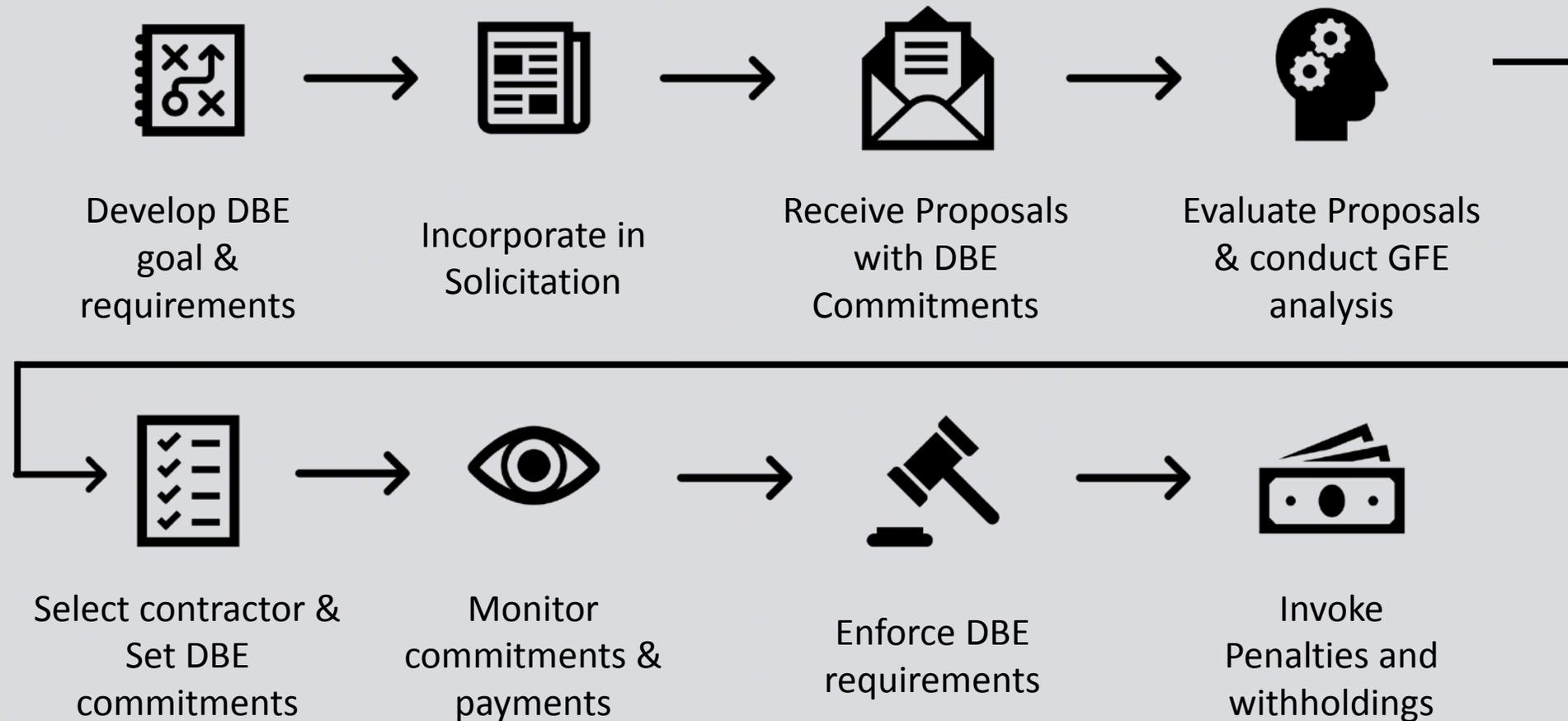
STEP 4

- Agency reviews request

STEP 5

- Agency approves or denies request

Understanding the Monitoring Process



Monitoring Requirements to Incorporate into Your Solicitation

Monitoring Requirements

- DBE commitments – include new commitments
- Submit monthly report with payments to DBEs
- Require DBE subcontractor payment verifications
- Require submission of subcontracts
- Require termination and substitution notices and GFE
- Commercially Useful Function reviews
- Invoice reviews – proper DBE credit

Monitoring Requirements to Incorporate into Your Solicitation

Advanced Monitoring

- Joint check requirements must comply with FHWA guidelines
 - Joint Check Agreement
 - Ensure DBE subcontractor is receiving materials
 - Ensure DBE subcontractor is recording material/supplies as accounts payable
 - Review copies of check
 - Other reviews may be required
- Non-DBE trucking credit – Should be in your DBE Program Plan
- DBE subcontracting or performance plan – Used for Alternative Delivery Method projects

Enforcement Mechanisms

Enforcement Mechanisms

How do you enforce compliance?

- Add requirements to your contract
 - Monitoring is required to determine noncompliance
 - Clauses that work for you

Which mechanisms are available?

- Liquidated Damages Clause
- Penalties
- Withholding



Enforcement Mechanisms

Adding enforcement requirements to your contract

- Enforcement requirements should be identified in your solicitation
 - Reports due on specific dates
 - Non-compliance with certain requirements considered a material breach of contract
 - Reporting of subcontractor payments required on timely basis
 - Proper DBE terminations required
 - Good Faith Efforts to award, pay, and substitute DBEs required
- If compliance is not met – enforcement mechanism is invoked

Enforcement Mechanisms

Contractor must comply with DBE regulations

- Assurance – nondiscrimination throughout performance
- 49 CFR Part 26 compliance

Failure to comply with DBE regulations is a material breach subject to the following remedies:

- Withholding of monthly progress payments
- Assessing sanctions
- Liquidated damages
- Disqualification from bidding on work – non-responsibility



**I ❤️
Being
Compliant**

Enforcement Mechanisms

Withholding

- Entire progress payment
- Up to \$10,000
- 2% of progress payment up to \$10,000

Assessing Sanctions

- Cancelled checks
- Affidavits for all invoices
- Monthly meetings
- Increase CUF Reviews
- Approval of subcontracts required
- Removal of contractor staff

Liquidated Damages

- Impose LD amount for late reports (i.e., \$500)
- No payment for work performed by unapproved subcontractor
- LD for failure to meet DBE commitment

Design-Build Projects

Design-Build Projects

- Overview of Alternative Delivery Method/ Design-Build Procurement
- Key Concepts for Diversity Programs
- Best Practices for Diversity Programs
- Managing Diversity Programs
- Lessons Learned
- Q&A



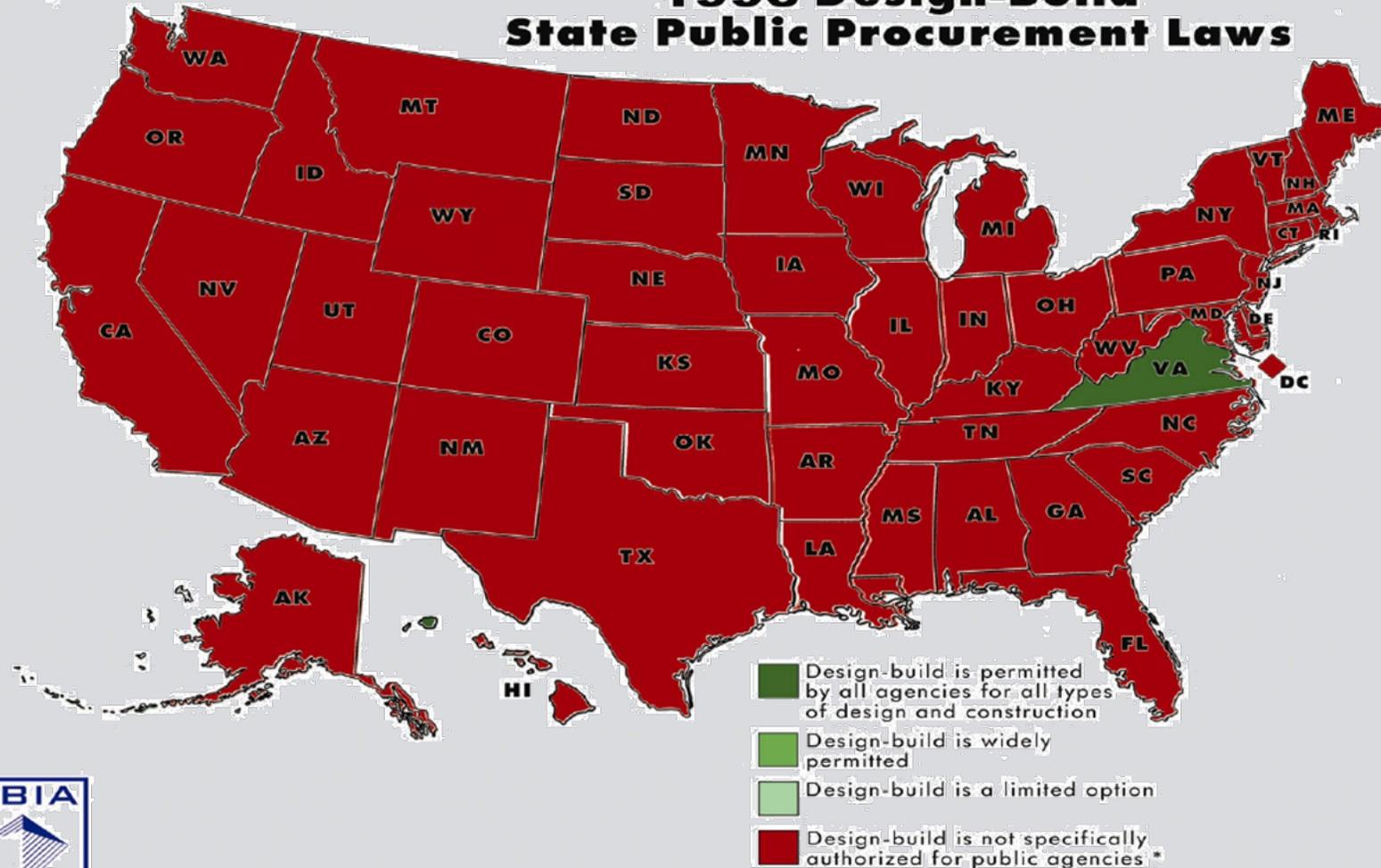
Overview of DBE and Alternative Delivery Projects

Alternative Technical Concepts:

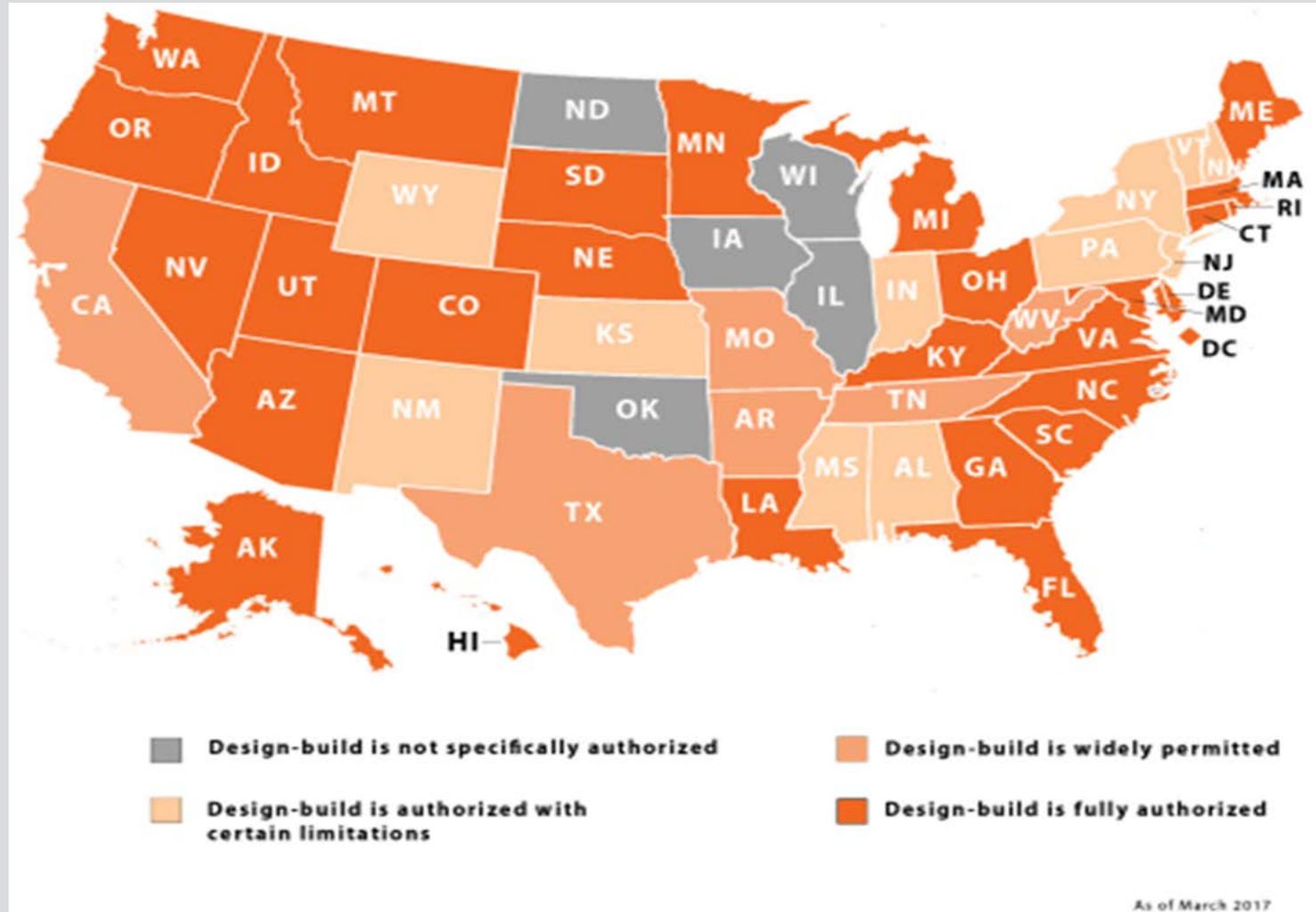
- Provide equal or better solution
- Do not conflict with criteria agreed upon in environmental process
- RFP clearly describes requirements for ATC content, submission and review
- Include procedures for confidential meetings, if used
- Compliance with Federal or State permitting and legal requirements

1993 Design-Build State Procurement Laws

1993 Design-Build State Public Procurement Laws

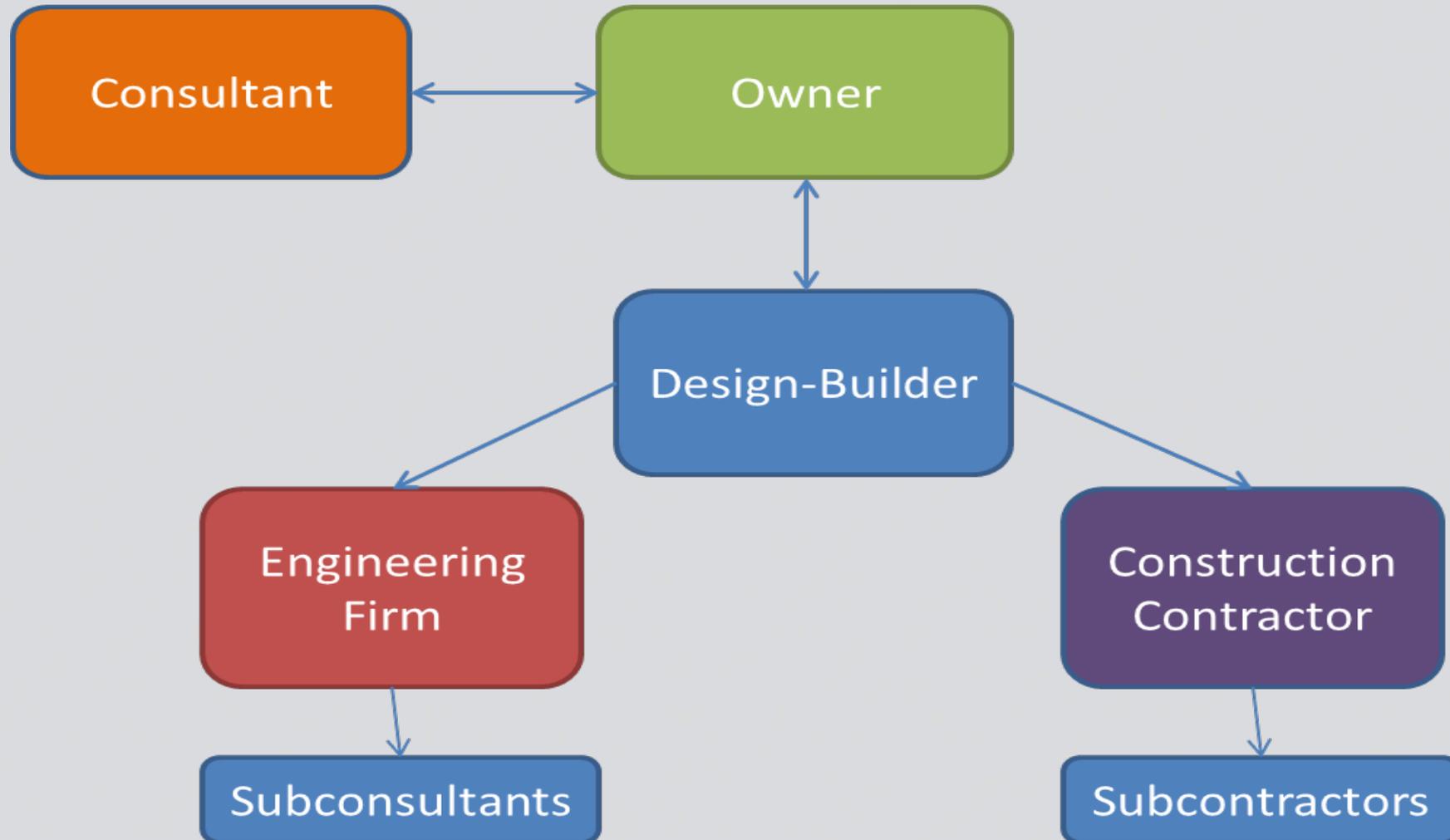


2017 Design-Build Authorization for Transportation



Alternative Delivery Method

Design-Build Project Delivery



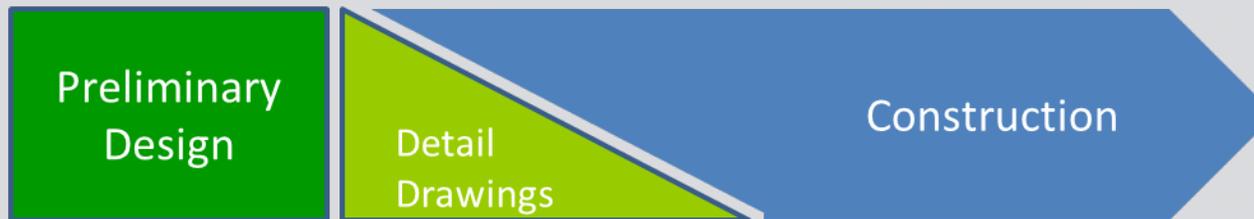
Design-Build Delivery Method

Traditional Method



Cost Estimated

Design-Build Method



Cost Estimated

Project Duration

Design-Build
Delivery

Traditional
Design-Bid-Build

“Design-Build” or “Turnkey” Project

49 CFR Part 26.53(e)

Design-Build (Master) Contractor Responsibilities

- Steps into the shoes of the Recipient
- May establish subcontract goals
- Conduct activities consistent with Part 26
 - DBE requirements apply regardless of the number of lower tiers
 - Compliance Monitoring/Reporting
 - Prime Contractor/Team is responsible!

Key Diversity Program Concepts

Preparing for Alternative Delivery Procurements

- Goal Setting
- Solicitation language and requirements
- Pre Award Documents

Managing Diversity Program Post-Award

- Program Compliance
- Goal(s) Achievement
- Compliance Documentation- Forms and Electronic

DBE/Diversity Goal Approaches for Design-Build Projects

Traditional Method

- Develop Contract Specific goal **before** IFB or RFP release
- Hold Contractor to DBE/Diversity commitments or ensure GFE is ok
- Monitor contractor DBE/Diversity performance after award

Design-Build Method

- Develop goal, goals, or overall project goal
- Ask Contractor to attest to meeting the goal(s)
- Hold Contractor to DBE/Diversity Commitments
- Monitor contractor DBE/Diversity performance after award

DBE/Diversity Goals Strategies- Traditional Procurement v. Alternative Delivery/DB Procurement

| Procurement Process | Traditional Design-Bid-Build (DBB) | Alternative Delivery/ Design Build (DB) |
|---|--|--|
| Identifying the project as appropriate for DBE/Diversity contract goals | Same | |
| Incorporating DBE/Diversity program language in RFQs, RFPs, and contract documents | | Create custom language for alternative delivery methods |
| Communicating opportunities to DBE and other small businesses | | Extended length of outreach |
| Establishing a DBE/Diversity goal(s) for the project | Same | |
| Reviewing DBE/Diversity proposal submissions when determining the award | Meet goal or show Good Faith Efforts | No DBE/Diversity commitments required – submit DBE/Diversity Subcontracting Plan |
| Monitoring compliance | Traditional review of DBE/Diversity Program compliance | Agency receives DB commitments, reviews GFE, and refines/monitors the DBE/Diversity S/C Plan |
| Remedying any noncompliance | Same | |

What are some challenges when applying the traditional DBE/Diversity contract goals method to alternative delivery method projects?

Setting contract goal with limited information

Any new process can create confusion among proposers and potential subs

Some engineering-related DBE/Diverse firms say they are left out

Can be long lead time between proposal date and when subs actually used in construction phase

Agency may not have staff to monitor DBE/Diversity commitments

Agency may not have knowledgeable staff to implement new DBE/Diversity Program

DBE/Diversity Goals Strategies for Alternative Delivery Projects

1. One overall goal for Project and specific contract goals for various segments
2. One goal for all the work
3. One goal for Design and one goal for Construction
4. One goal for Design and multiple goals for construction phases

Contract Goals

strat.e.gy
(strāt' ə-jē) n.
1. Plan of action
designed to achieve
a particular goal.

DBE/Diversity Goals Strategies for Alternative Delivery Projects

- Establish a DBE/Diversity Goal or Goals
 - When?
- Require Contractor provide affidavit or certification at time of proposal that it will exercise GFE to meet the goal
- Require Contractor submit a plan on how it will achieve the DBE/Diversity goal
- Monitor the **Plan**

Why a Subcontracting Plan?

- Some subcontracting opportunities unknown at the time of award
- Allows monitoring throughout performance
- Allows for adjustments and quick action
- Helps everyone meet or exceed DBE/Diversity goals



Subcontracting Plan Elements



Introduction



Communication



DBE & SB commitments



DBE & SB Database-Directories



DBE Participation



Quarterly Strategy meetings



DBE Supportive Services



DBE & SB Program Reporting

Experience when using new methods for goals for Design-Build projects

- Require a DBE/Diversity plan at time of proposal rather than specific DBE/Diverse commitments can achieve more objectives of Federal DBE or local diversity Program
- Agency can require more strategies for assisting DBE/Diverse firms and other small businesses
- Many times, higher DBE/Diversity commitments will be achieved
- Monitoring must focus on whether DBE/Diversity plans are implemented

Key to Success on Design-Build Contracts

Comprehensive Goal Evaluation-

- Relevant Capacity and Opportunities

Coordination

- Owner, Contractor and Subcontractors

Communication-

- Expectations and Requirements
- Appropriate Documentation and Process

Compromise

- Flexible and Innovative (revised Paperwork v. Electronic)

Local Governments

Local Government Checklist

- All federal-aid projects are subject to Disadvantaged Business Enterprise (DBE) requirements.
- The Local Government (LG) must implement TxDOT's DBE program and coordinate closely with the TxDOT district.
- LGs adopt TxDOT's DBE program, which requires monitoring and reporting on the performance of its DBE participation.
- The LG DBE Compliance & Monitoring Guide includes an extensive discussion of the DBE program background, contract provision, and monitoring & reporting requirements.

LG Project DBE Compliance Monitoring Checklist (Form 2658)

| | | | |
|---------------------------|----------------------|---------------------------------|----------------------|
| Date | <input type="text"/> | Prime Contractor | <input type="text"/> |
| Project No./CSJ | <input type="text"/> | Contract Amount* | <input type="text"/> |
| County | <input type="text"/> | DBE Goal (dollar amount)* | <input type="text"/> |
| LG Entity | <input type="text"/> | DBE Percent* | <input type="text"/> |
| LG Representative's Name | <input type="text"/> | Project Completion (percentage) | <input type="text"/> |
| LG Representative's Title | <input type="text"/> | Total DBE Committed Amount* | <input type="text"/> |

**Enter numbers only*

Pre-Award Project Checklist

1. Did the apparent low bidder submit their DBE commitment information with their bid or within the time frame as required in the DBE Special Provision? Yes No
2. Prior to award, was the contractor's DBE participation plan reviewed and approved to ensure the contract goal will be satisfied in accordance with provisions in the bid document? Yes No
3. Has the contractor's DBE participation plan been approved? Yes No
4. Is the established project goal, as set by TxDOT, included in the contract? Yes No

Please attach a copy of the contract.

If no, please explain.

4. Is the DBE special provision included in the contract? Yes No
5. Are the DBE Commitment Agreements (form SMS.4901, SMS.4901-M/S, or 2660) on file? Yes No

Please attach copies of the DBE Commitment Agreement forms.

If no, please explain.

6. Are the Commitment Agreements (form SMS.4901, SMS.4901-M/S, or 2660) signed by both the prime and the DBE? Yes No

If no, please explain.

The LG Must...

- Ensure the DBEs are certified under the Texas Unified Certification Program
- Review the DBE participation plan prior to contract award to ensure contract goals will be satisfied.
- Conduct CUF reviews
- Monitor progress during construction to assure the goal is met or good faith efforts are made
- Report final progress payment information
- Use the LG Checklist Form 2658 to document compliance with the DBE program requirements during the course of the project.

District Responsibilities

- Ensure the LG federal-aid projects are administered with DBE requirements as outlined in 49 CFR Part 26.
- Use the LG checklist Form 2658 to audit the LG's federal-aid project.

Benefits of the LG Checklist Form

1. Ensure Compliance with DBE Contract Requirements

- As LG staff complete various phases of the project, they use the checklist as a reference to ensure they adhere to the DBE contract monitoring and reporting requirements previously noted.

2. Monitor Performance

- TxDOT and LG staff can use checklist data to analyze the DBE project administration compliance of a project.

3. Identify Areas of Improvement

- The checklist helps target problems and implements changes for compliance. For example, the audit might reveal that not all CUF reviews were conducted by LG staff.

Questions?