

# Caltrans State-Wide Small Business Council Meeting Record

May 17<sup>th</sup>, 2024, 8:30 a.m. – 12:00 p.m.

- Hybrid, in person at 1120 N. St., Sacramento, CA, and virtual via WebEx
- Next Meeting: July 18<sup>th</sup> and 19<sup>th</sup>, 2024, hybrid at District 4 at 111 Grand Ave, Oakland, CA 94612 and via WebEx.

## Action Items

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- OCR will investigate if the contract manager policy on monitoring subcontractors is available to share.

## Welcome and Council Member Roll Call – David DeLuz, Office of Civil Rights Deputy Director

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- Meeting Start Time: 8:33 a.m.
  - Quorum achieved - 20 of 30 council members present.
- There are several flyers included for upcoming events:
  - Small Business Fairs in San Diego and Oakland.
  - Dream Big Small Business Forum Flyer in Los Angeles.
- Uzoma Okoro is a new primary council member, representing the Sacramento Black Chamber of Commerce.
- Audrey Zagazeta is the new primary council member replacing Shari Tavafrashti, representing WTS International, San Francisco.

## Agenda Review and Meeting Record Approval

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- Zeke Patten motioned to approve the March 15, 2024, meeting record with all necessary corrections. Eddy Lau seconded.
  - Motion passed.

## Highlights from the Director's Office – David DeLuz, OCR Director

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- May is Asian American and Pacific Islander Month
  - Caltrans recognizes the history and achievements of AAPI communities and how they have shaped Caltrans and the community.
- Safety
  - On April 25, Caltrans held its statewide Workers Memorial.
    - A tribute to the 193 workers who have been killed on the job.
      - The observance also honors fallen contractors and highlights transportation safety awareness for all.
- Climate Action
  - Caltrans was awarded the Department of General Services' Gold level for Green Awards.
  - The award, linked to Caltrans' Division of Procurement and Contracts (DPAC), reflects the commitment and work of not just DPAC but to Caltrans contract partners and contract managers statewide.
- Caltrans will spend \$930 million over the next four years to improve bicycle and pedestrian infrastructure throughout the state.

- This includes 265 miles of new and improved bike lanes on state highways and the addition of more than 1,300 safety elements by mid-2028.
  - These bike lanes will offer another contracting opportunity for our contractors.
- New Appointments
  - The Director's Office of Equity, Sustainability, and Tribal Affairs is being separated into two offices.
    - Within that, Nailah Pope-Harden is the new deputy director of Equity and Tribal Affairs.
  - Andrew Baskerville has been appointed the, Deputy Director over Construction in District 4, Oakland.
  - Wajahat Nyaz has been appointed Deputy Director over Design in District 4, Oakland.
  - Kelly Lamare has been appointed "acting" Deputy District Director of Program/Project Management in the Los Angeles region, District 7.
- Passing of Small Business Council member
  - Paul Guerrero, a member of the SBC since 1988, passed away on January 22nd.
  - Paul was an entrepreneur and a founding owner of Andero Construction. He was a member of La Raza Roundtable, and several Hispanic Chambers, including the San Joaquin Hispanic Chamber of Commerce, and was the founding member of The United Minority Business Entrepreneurs.
  - Paul's impact on the Council and with Caltrans cannot be understated.
- Comments and Questions:
  - Paul's family deeply appreciates everything that has come from Caltrans. I appreciate the acknowledgment. (Danny Garza).
  - We want in-person meetings to meet Caltrans staff and OCR staff. Please ask the Caltrans staff to introduce themselves and their positions. (Eddy Lau).
    - All Caltrans staff present in-person and online introduced themselves.

## FHWA Update – Elissa Konove, Acting Director of Field Services – West

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- Fiscal Year 2024 Funding
  - Funding notices for FY 2024 have been issued and obligations of funding for projects have been ramping up.
- BIL Grant Awards
  - Reduction of Truck Emissions at Port Facilities Program
  - Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT)
    - \$829.6 million was awarded to 80 recipients to address the climate crisis by improving the resilience of the surface transportation system.
      - CA received 6 awards totaling \$58 million.

- Safe Streets and Roads for All (SS4A)
  - Announcement for round of planning and demonstration grants anticipated very soon (update – announced on May 17).
- Notices of Funding Opportunity
  - 8 open NOFOs totaling \$5 billion
  - 7 NOFOs in development
    - Please check the FHWA and DOT websites for funding opportunities and resources for applicants, and also the Caltrans Federal Liaison IJJA Bi-Weekly newsletter.
- DEB Rulemakings
  - On April 9, USDOT issued a final rule that modernizes the DBE program and Airport Concessions DBE (ACDBE) program regulations.
  - Michael Caliendo, FHWA CA Division Civil Rights Program Manager, provided an overview of the final rule:
  - New Net Worth Rule Change
    - New cap \$2.047.
      - Based on Federal Reserve data of household income, considered a better measure of adjustment than CPI.
      - Old net worth cap was \$1.32.
    - Allows for future upward adjustments every three years without the rulemaking process.
    - The new rule also excludes retirement assets.
  - US DOT reworked “ability to accumulate substantial wealth” rules, the backstop to excessive wealth.
  - Motor Vehicles of any type belong to primary operator.
  - Aligns rule text with law that makes permanent the 5-year average calculation of gross receipts to determine business size for individual NAICS codes.
  - The full PowerPoint Presentation was shared with the Small Business Council attendees after the meeting.
    - Additional information available at <https://www.transportation.gov/dbe-rulemaking/webcast>.
- Comments and Questions:
  - Regarding prompt payment, does that include Professional Services and Construction? (Trinity Nguyen).
    - It is both, at all tiers. Oversight is required there as well. (Michael Caliendo).
  - Is there a plan for rollout at the various agencies it will affect? (Raewyn Butcher).
    - Yes, there is a timeline for rollout. (Michael Caliendo).
    - There are upcoming trainings. The link will be shared so you have access while they roll out the new requirements. (Elissa Konove).
  - Can you forward the documentation with the language for prompt pay and CUF requirements? (Shaila Rao Mistry).

- There is a strengthening in CUF requirements at the project level. The SBC should read the preamble to the rule. It explains the logic. (Michael Caliendo).
  - Is there a cheat sheet? (Shaila Rao Mistry).
    - I haven't developed that but when I do I will share it with the Council. (Michael Caliendo).

## Disparity Study – Betsy Sava and Sameer Bawa

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- Outreach to local agencies has wrapped.
- There are a few outstanding contracts.
- In addition to data collection for DLA contracts, BBC is beginning outreach to agencies that received funding from DOTP.
- Availability surveys have launched.
  - The second round will launch in June.
- Community engagement/focus groups are forthcoming.
  - If you have trade association contacts who would like to participate in a focus group, reach out to Betsy Sava.
- Comments and Questions
  - BBC is collecting contract data? (Eddy Lau).
    - Information is collected from OE, DPAC, alternative delivery, DLA, DOTP. Outreach is done to the agencies who awarded the contracts. Contract award and contract closeout, as well as uniform reports to see who was not selected. (Betsy Sava).
      - The Professional Services Committee has been attempting to get to close out reports. How can BBC get that information? (Eddy Lau).
        - BBC is collecting data beyond what OCR has. BBC is reaching out to agencies directly. What Caltrans has is available is what is sent over.
        - This process is done every 3 years. There are multi-year projects. Caltrans is working to implement strategies to collect that data. (David DeLuz).
          - The New DBE Rule will require that Caltrans have more clear data. There are 8 months of data from B2Gnow. FHWA has agreed having Caltrans recreate boxed data isn't a good use of resources. Within a year there should be a complete picture of what you're asking for. (Michael Caliendo).
          - There will be a prompt pay at this meeting. OCR and Compliance are overseeing monitoring and reporting on A&E, starting this fiscal year. (Anna Silva).

- We want both ends, we are more focused on bottoms up approach and tools seeing from the top down. (trinity Nguyen).
  - From the bottom down, Caltrans developed a policy with a contract manager policy on true roles and responsibilities on monitoring subcontractors. (Anna Silva).
    - Can we get a copy of that policy? (Trinity Nguyen).
    - We will discuss that. (David DeLuz).

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## District Highlight – Shalinee Hunter, Assistant Director of Equal Employment Opportunity Program

- Equity is internal and external. Caltrans engineers need to have an equity lens.
- Caltrans Required Trainings – Every Two Years
  - DEI for the workplace
  - Disability awareness
  - Implicit bias
  - Sexual harassment prevention
- Disability Advisory Committee
  - Chair, Tarek Tabshouri, Aeronautics
  - Co-Chair, Erin Von Tersch, OCR
  - Asami Saito, Secretary
- The EEO program publication is about to be launched.
  - Will provide a glimpse of history and heritage celebrations.
- Discrimination Complaint Investigation Unit (DCI)
  - Corrective action will be taken in response to violations that are people-centered and holistic.
- The SBC and EEO may collaborate on initiatives aimed at promoting diversity and inclusion in both business contracting and employment practices. For example, we could work together to develop training programs or outreach efforts.
- Contact:
  - [ask.eeo@dot.ca.gov](mailto:ask.eeo@dot.ca.gov)
- Comments and Questions:
  - This presentation was much appreciated. (Shaila Rao Mistry).
  - Have dealt with it as a contractor. This is a major issue that affects small business. (Abd Jahshan).

- Due to time constraints, this item was skipped. Questions regarding the Action Item Log may be forwarded to Shannon Koga or David DeLuz.

## Caltrans State Partner Reports Department of General Services (DGS) – Angela Shell

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- DGS attended 63 outreach events.
- Upcoming Solicitations include:
  - Extractors and dryers
  - Electric fleet vehicles
  - Drones
  - Zero-emission transit buses
- Upcoming DGS Office of Business and Acquisition Services Opportunities:
  - Construction and Goods
  - IT – Goods & Services
  - Equipment Rental
  - FLS System Maintenance
- OSDS Certification
  - GAR Increase
    - Based on the 2023 DGS biennial review, effective April 2024, the SB certification size standards are as follows:
      - Microbusiness GARs limit increased from \$5 million to \$6 million.
      - SB GARs limit increased from \$16 million to \$18 million.
      - SB for the Purpose of Public Works (SB-PW) GARs limit increased from \$38 million to \$43 million.
- Certification continues to experience a backlog with over 800 applications in the queue, with the oldest file in January, due to a record-high surge in incoming applications.
  - Since April 2023 (AB 2019), 633 certified DBEs applied for and received new SB certification.
  - For expedited certification application processing with bid due dates within 30 days form submission of application, please follow the expedited request process at: File Certification Expedite Request for Businesses
    - For any other certification questions please contact [OSDShelp@dgs.ca.gov](mailto:OSDShelp@dgs.ca.gov).
- SB/DVBE Training
  - Training on navigating the state bidding and contracting process is currently offering four classes. The next target is a training cohort of eight courses with certificates of completion.
  - SB/DVBE Training Website: [SB-DVBE-Training-Unit](#)
  - SB/DVBE You Tube Playlist: [SB/DVBE Training](#)
- Next Class: Understanding State SB and DVBE Commercially Useful Function (CUF) on June 26, 2024, 9:30 PM to 11:00 AM

- Register here:  
<https://us06web.zoom.us/meeting/register/tZ0rdO2grz0oHdwNeLHa-gYhySvUI7MTMRf-#/registration>
- Statewide Advocacy Support
  - CAR report published, the state exceeded both goals, with SB at 25.45% and DVBE at 5.38%, with \$4.17 billion going to SBs, of which \$1.99 billion to Micros, and more than \$878 million to DVBEs.
  - Per AB 2019, reminder that this is the first of the 3 of 5 years mentioned in the AB 2019 - if departments do not meet the goals in 3 of 5, they are subject to remedial actions.
    - OSDS Advocacy Support is working closely with the departments that did not meet the goals, including one-on-one consultations and a Best Practices Webinar.
- Economic Impact Study of the SB/DVBE Program
  - Under review, preliminary findings show that \$100 spent by the state with a SB results in \$196 for their communities in the economic multiplier. The noncertified business multiplier is \$188. Upon completion of study, DGS will highlight and communicate these findings.
- InFocus Resource – designed to help SB/DVBE and state departments navigate recent legislation building uplifting small business participation in state contracting.
  - <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/How-to-do-business-with-the-state-of-California?search=how%20to%20do%20business>
- DGS published [MM No. 24-02](#) with guidance on AB 2974 requiring SB participation on IJA-funded contracts.
- Statewide Supplier Diversity Program (SSDP) Update
  - Disparity Study
    - The disparity study contract is moving through the review process and the contract is expected to be signed by June 2024. In focus, summary of recent legislation
  - Voluntary Diversity Data
    - The total number of businesses with diversity data submitted as of 05/06/2024 is 10,675.
      - The number is showing a steady increase on a bi-monthly basis.
      - The total number of suppliers having their diversity data submitted is 215 and the bidder's is 10,460.
- Provides info on what the legislation requires and what department strategies and resources are put in place to implement this.
- Comments and Questions:
- With the disparity study, African Americans are doing 1%. A goal is what we need to accomplish. I hope these issues will be addressed going forward. (Fred Jordan).

- The disparity study measures the availability of firms that are certified and not certified, firms owned by disadvantaged groups and not disadvantaged groups. The methodology for the last two disparity studies is still online. Just because there is a disparity study weighted average, that does not mean there is a cap on what they can do. 1.4% does not limit the number of contracts they can have. The weighted average is what is expected given the presence of those firms in the marketplace. It is not a quota. We are doing everything we can to promote and encourage the participation of disadvantaged enterprises. (David DeLuz).
  - We are focused on DBEs and getting them certified and moving forward. (Traci Adams).

## Caltrans State Partner Reports Governor's Office of Business and Economic Development (GO-Biz)

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- There was no representative available and no report was given.

## Caltrans State Partner Reports – High-Speed Rail, Catrina Blair

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- The California High-Speed Rail Authority will have an exhibit at the California State Fair in July 2024, that will showcase a full scale mockup of a train car.
- Contracts and Procurements
  - RFP- Design Services for Track and Overhead Contact Systems
    - Notice of Proposed Award: May 6, 2024
  - RFP- High-Speed Trainsets and Related Services
    - The Authority has released the [shortlist of Potential Suppliers for Electrified High-Speed Trains in California](#). The shortlist includes two teams:
      - Alstom Transportation Inc.
      - Siemens Mobility Inc.
    - Small Business firms and other firms interested in potentially teaming with one or both Proposers should contact Proposers directly.
      - Notice of Proposed Award: September 2024
- Meet the Prime with Deutsche Bahn Engineering & Consulting USA, Inc. on June 5<sup>th</sup> (Virtual Only).
- Get Connected with HSR:
  - <https://hsr.ca.gov/business-opportunities/small-business-program/get-connected/>
- Vendor Registration:
  - <https://hsr.ca.gov/business-opportunities/small-business-program/connecthsr-vendor-registration/>
- Contracts out for Bid:
  - <https://hsr.ca.gov/business-opportunities/contract-opportunities/>
- Contact the Small Business Advocate:
  - [SBprogram@hsr.ca.gov](mailto:SBprogram@hsr.ca.gov)



## Break

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- Break Start: 10:24 a.m.
- Break End: 10:29 a.m.

## Local Assistance Committee Reports – Debbie Hunsaker, Chair

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- No Committee Meeting took place.

## Professional Services Committee Reports – Trinity Nguyen, Chair

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- Thanks to District 11 for providing the requested utilization report.
- Thanks to David Prizmich for attending the meeting.
- Uzoma Okoro, new SBC member, has joined the Professional Services Committee.
- The Committee is looking to set up a meeting with David DeLuz to go over training progress with all DSBLs from all districts.

## Commodities Committee Reports – Zeke Patten, Chair

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- The Commodities meeting had an in-depth conversation on CUF.
- Would still like Maintenance to be included in the Committee Meetings.

## Construction Committee Reports – Anna Silva

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- Caltrans introduced a Partnering Improvement Proposal Form (PIP).
  - The Committee should use the form to identify the problem and submit it to the OCR facilitator.

## African American DBE Participation Ad Hoc Committee – David DeLuz

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- David DeLuz served as the interim chair.
  - A Chair is still required for the Committee. One or two candidates were discussed and OCR staff should set up meetings with them.
- Discussed issues such as:
  - Unbundling/access to capital/prompt pay. These issues especially impact African American firms as well.
  - Bridge rehab and restoration efforts.

## Legislative Report – Danny Yost, Assistant Deputy Director of Legislative Affairs

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- AB 3186 – Petrie-Norris
  - Subject: prevailing wage and access to certain records.
  - This bill mandates contractors and subcontractors on public works projects and certain development projects to provide specified records upon request to the Division of Labor Standards Enforcement, Taft-Hartley trust

funds, and joint labor-management committees. Non-compliance with these requirements will result in penalties.

- AB 2439 – Quirk-Silva
  - Subject: Public works, prevailing wages, and access to records.
  - This bill requires owners, developers, or their agents receiving public funds for public works projects to provide specified public works records, including bid documents, inspection logs, and funding documentation, upon written request from a joint labor-management committee, a Taft-Hartley trust fund, or a specified tax-exempt organization.
- AB 2086 – Schiavo
  - Subject: Transportation funding.
  - Would require Caltrans to enhance an existing public online dashboard to display how annual project investments are advancing the vision and goals of the California Transportation Plan, including reporting on the status of the implementation of the short-, mid-, and long-term implementation actions.
- AB 2290 – Friedman D
  - Subject: Transportation, Class III bikeways, bicycle facilities
  - This bill would prohibit the allocation of Active Transportation Program funds for a project that creates a Class III bikeway unless the project is on a street with a design speed limit of 20 miles per hour or less or the project will reduce the design speed limit to 20 miles per hour or less.
- SB 934 – Gonzalez D
  - Subject: Zero-emission freight infrastructure, interagency coordination, reporting.
  - This would require the CTC and Energy Commission to jointly convene the Zero-Emission Freight Central Delivery Team to lead the statewide coordination of zero-emission freight infrastructure planning and implementation.
- SB 960 – Wiener D
  - Subject: builds on complete streets policy.
  - This bill foreshadows a coming transit policy and directs Caltrans to adopt a transportation policy.
- SB 1159 – Dodd D
  - Subject: CEQA, roadside wildfire risk reduction projects.
  - Would require the Office of Planning and Research to evaluate adding CEQA categorical exemption for roadside projects no more than 5 road miles from a municipality or census-designated place that are undertaken solely for the purpose of wildfire risk reduction.
- SB 1325 – Durazo D
  - Subject: Public contracts, best value procurement, goods.
  - Would authorize public entities to utilize the best value procurement method to purchase goods with a base value of \$250,000 or more if certain criteria are met.

- Comments and Questions:
  - We are currently experiencing problems with soil with dangerous materials in it in the Bay Area. Is Caltrans going to follow protocol for SB 1159 for removing poison on dust? (Danny Garza).
  - I'd have to look into regulations in dust control. (Danny Yost).
    - Is the intent to reduce the ability to use CEQA? (David DeLuz).
    - Permits would still be required, any impact to habitats, water quality, or stormwater runoff. It is not that it wouldn't have to comply with those laws, it is about the review under the Environmental Quality Act. (Danny Yost).
  - AB 2451 was introduced by Cervantes and would require overlapping classifications, and the contractors to pay the higher rate. Caltrans would have to enforce higher rate. It will potentially affect bid costs and reporting for prevailing wages. (Lindsey Woolsey).
  - Is there any upcoming bills addressing the development of the electric vehicle network? (David DeLuz).
    - There are upcoming bills for building EV chargers. California received a large share of federal funding to install EV chargers. There is a BCP at the legislature, to increase our funding over the next 2 years. Caltrans wants the greenest fleet in the nation.
      - The implementation rules that came out from the feds excluded DBE goals on the EV chargers, but there is a desire to put SB goals on the installation, maintenance, and development of the charging stations themselves, as well as cement work, landscaping, and ancillary work. (David DeLuz).
  - Will we receive a handout of this information? (Zeke Patten.)
    - Yes. (Danny Yost.)
      - This handout was shared with the SBC after the meeting by Shannon Koga.
  - Is there a way for a monthly update from the Legislative Branch? (Shaila Rao Mistry).
    - Caltrans has limited resources. (David DeLuz).

## Office of Civil Rights Reports – Leah Van Dyne, Outreach and Data Analysis

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- The Data Reports section was abbreviated due to limited time. The presentation and reports were shared with the Council.
- Federally Funded Contracts
  - DBE Participation (Overall numbers as of April 30, 2024)
    - Caltrans has awarded 169 Federal Highway Administration (FHWA)-assisted contracts (OE, DPAC, DLA, DOTP, DB, and CMGC contracts) in FFY 2023-24, valued at \$2,048,074,919.03.

- Total DBE commitment at award is \$463,505,312.74 or 22.63 percent.
  - Caltrans has awarded 168 FHWA-assisted contracts (OE, DPAC, DLA, DOTP contracts) in FFY 2023-24, valued at \$1,975,554,919.03.
    - Total DBE commitment at award is \$448,779,073.07 or 22.72 percent.
  - Caltrans has awarded 1 FHWA-assisted CMGC contract in FFY 2023-24, valued at \$72,520,000.00.
    - Total DBE commitment at award is \$14,726,239.67 or 20.31 percent.
- DBE Participation (A&E as of April 30, 2024)
  - Caltrans has awarded 26 FHWA-assisted A&E contracts in FFY 2023-24, valued at \$336,986,192.00.
    - Total DBE commitment at award is \$71,900,822.95 or 21.34% percent.
- The SED groups that are performing above the Disparity Study Average:
  - Subcontinent Asian at 2.40%
  - Native American at 1.54%
  - Non-Minority Women Owned at 6.07%
  - Non-Minority Men 0.07%
- The SED groups on **OE, DPAC, DLA, DOTP, CMGC**, and **Design Build** contracts of April 2024 are as follows:
  - For April 2024, Caltrans overall participation was 22.63 percent. This is a 7.77 percent decrease over the April 2023 overall participation of 24.54 percent.
  - For April 2023, Caltrans overall participation was 24.54 percent. This is a 38.56 percent increase over the April 2022 overall participation of 17.71 percent.
- State-Funded Contracts including Minor B
  - Effective June 1, 2021, 100% Small Business goal on Minor B projects with a limit of \$388,000
  - State Fiscal Year 2023-24, Caltrans executed 160 Minor B contracts totaling over \$41.1 million.
    - Out of the \$41.1 million, small businesses/micro businesses were awarded 91.7 percent or over \$37.7 million.
    - Out of the \$41.1 million, small businesses were awarded 35 percent or over \$14.3 million.
    - Out of the \$41.1 million, micro businesses were awarded 56.7 percent or over \$23.3 million.
  - Out of the \$41.1 million, Disabled Veteran Business Enterprises (DVBEs) were awarded 0.9 percent or over \$368 thousand.
    - \$282.8 thousand is also included in SB total as DVBE is Dual certified (14 contracts)

- \$84.2 thousand is also included in MB total as DVBE is Dual certified (11 contracts)
- For additional questions, please email [Business.Support.Unit@dot.ca.gov](mailto:Business.Support.Unit@dot.ca.gov)

## SBC Topic: Large Group Discussion/Prompt Payment Presentation

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- Prompt Pay Overview - Anna Silva
  - 49 CFR, Part 26.29 requires DBE firms to be paid promptly.
    - Under California Public Contract Code, contractors must pay subcontractors within 7 days of receipt of each progress payment. Under Standard Specifications 5-1.13E, non-subcontractor DBE firms, such as material suppliers, must be paid within 30 days of receipt of each progress payment.
  - Caltrans is attempting to mitigate challenges. There are policies and procedures in development.
  - California Public Contract Code 10262 & Business and Professions Code 7108.5
    - Subcontractors within 7 days of receipt of each progress payment.
    - Other entities within 30 days of receipt of each progress payment.
  - California Civil Code 3321
    - Sub-consultants within 15 days of receipt of each progress payment.
  - California Government Code 927
    - Caltrans must pay a contractor invoice within 45 days
- Division of Construction, Prompt Pay – Lindsey Woolsey
  - Section 5-1.13E has added Prompt Payment Requirements to the Standard Specifications. These requirements include:
    - Clearly identified subcontractor and DBE payment requirements;
    - Primes, subcontractors, and DBEs must now utilize B2GNow to report payments on a monthly basis;
    - A process for payment disputes; and
    - Penalties for Prompt Payment violations.
  - The standard specifications are updated annually.
  - B2Gnow operates the system, which is called the Caltrans DBE System. It includes every contract after the 2022 standard specifications.
  - Once a project is awarded, Caltrans staff must:
    - Enter the project into B2GNow; and
    - Each Month, enter into B2GNow payments made to the Prime for the month prior.
  - The Prime will enter payments to all subcontractors and firms associated with commitments. They must report \$0.00 payments for reporting purposes.
  - The subcontractors can review and confirm the Prime's reported payments and report discrepancies.

- There is also a message/comment capability.
  - Caltrans will review B2Gnow to identify reported deficiencies and request information from the Prime and DBE to determine if there has been a violation.
    - If a violation has been identified, Caltrans:
      - Notifies the Prime
      - Withholds value of payment plus calculated penalties
      - Releases withhold only when confirmation of payment and penalties are provided by the Prime
        - 2% for each month payment is past due
  - 430 contracts are now in B2GNow.
    - The primes have sent out over 9,000 payment requests.
    - 9 disputes have been submitted (.01%)
- Division of Local Assistance – Aaron Catubig
  - Section 20104.50 states that LPAs must pay their contractors within 30 days after invoice.
  - The Division of Local Assistance (DLA) works with the District DLA and local agencies. Local agencies manage and pay primes. Primes pay subcontractors. It's a reimbursement process.
  - The current state of the work is in its infancy with handwriting forms.
  - DLA is in the process of procuring the B2gNow system to make improvements.
  - Prompt Pay Data:
    - 126 Total Number of active federally funded projects
    - 66 of these contracts include DBE's
    - 156 number of DBE firms have been paid
    - \$25,621,280 total payments have been made to DBE firms
- Professional Services Prompt Pay – Taelor Stamm
  - Existing policy and procedures:
    - Subcontractor and DBE payment requirements
    - Payment reporting
    - Payment dispute process
    - Prompt Payment violation penalties
  - Contracts Payment Review
    - Contract Manager reviews ADM-3069 or ADM-3069-AE to identify reported deficiencies, and request information to determine violations.
    - Request for Records – First Notice:
      - Invoices, Purchase Orders, Subcontract Agreements, Proof of Payments, Joint Check Agreements
    - Request for Records – Final Notice
    - Failure to provide records = Performance Failure withhold
    - Local Agency review project records
  - Current FY A&E Contracts

- 20 Executed A&E Contracts
  - 10 ADM-3069AE Forms received
  - 8 ADM-3069AE Forms claim DBE payments
    - Total dollar value to DBE Firms: \$550,563.61
- What to Look For
  - When performing a review, consider the following:
  - When did the Prime receive payment from Caltrans?
  - What work was the Prime paid for?
  - Is there submitted documentation showing payment for the work performed?
    - Were Joint Checks used?
- Subcontract Agreements:
  - Subcontract agreements often include:
    - Form FHWA-1273
    - A description of the work to be performed
    - An agreement for Payment
    - Bonding/insurance requirements
    - Prevailing Wages
    - Other agreed upon information
  - A subcontract may not directly contradict state and federal regulations.
- Invoice/Purchase Orders
  - The date the DBE requested payment;
  - The work performed by the DBE; and
  - The amount due for the work performed.
- Payment methods vary based on the agreement. Documents submitted for payment may include:
  - Copies of cancelled checks
  - Bank transactions
  - Joint checks
- A Prompt Pay violation may exist if:
  - An invoice was submitted, but payment has not occurred.
  - An invoice was submitted, but the DBE only received a partial payment.
  - A DBE subcontractor payment occurred *after* 7 days of the Prime's receipt of the progress payment, and the DBE's invoice was dated prior to that receipt.
  - A non-subcontractor DBE payment occurred after 30 days of the Prime's receipt of the progress payment, and the DBE's invoice was dated prior to that receipt.
- A Prompt Pay violation may exist if:
  - An invoice was submitted, but payment has not occurred.
  - An invoice was submitted, but the DBE only received a partial payment.

- A DBE subcontractor payment occurred after 7 days of the Prime's receipt of the progress payment, and the DBE's invoice was dated prior to that receipt.
  - A non-subcontractor DBE payment occurred after 30 days of the Prime's receipt of the progress payment, and the DBE's invoice was dated prior to that receipt.
- If there is no Prompt Payment violation, Caltrans will close out the matter within the tracking system.
- Payment disputes may be valid if:
  - The DBE has not submitted appropriate records to the Prime (for example, Certified Weekly Payroll Records), and this results in a Caltrans withhold;
  - Liquidated damages exist as a result of the DBE's performance under the contract; or
  - The DBE has violated bond or license requirements.
- Future policies and procedures
  - Explain and clarify Prompt Payment requirements to prime- and subcontractors in all public facing materials
    - Primes must enter payment data into B2G Now system or submit monthly subcontractor payment forms by the 10<sup>th</sup> of each month
    - Subcontractors must submit monthly invoices, bonding, insurance, labor compliance documentation to primes
  - Increase staffing to keep up with monitoring of all contracts
  - Currently developing trainings, guidance, and resources
  - Revise Standard Specifications, LAPM, and DPAC Boiler Plate language.

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#### New Business

- None.

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#### Public Comment

- None.

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#### Meeting Adjourned

- Meeting adjourned at 12:08 p.m.

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#### Closing Remarks/Next Meeting – David DeLuz

- July 18<sup>th</sup> and 19<sup>th</sup>, 2024
  - Hybrid via WebEx and in-person at the District 4 office in Oakland, CA.

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#### Council Members – Roll Call

- Dr. Matthew Ajiake, San Francisco Bay Area Small Business Council



- Raewyn Butcher, BuildOUT California
- Julian Canete, California Hispanic Chambers of Commerce
- Derek Carroll, Elite Service-Disabled Veteran Owned Business Network (Elite SDVOB Network)
- Lee Cunningham, Women Construction Owners and Executives, CA Chapter
- Karen Rollandi, Women Construction Owners and Executives, CA Chapter
- Charissa Frank, WTS International, San Francisco
- Bruce Giron, National Association of Minority Contractors, NorCal Chapter
- Venessa Gleich, American Indian Chamber of Commerce of CA
- Danny Garza, La Raza de Roundtable
- Sarah Harris, Black Business Association
- Johnathan Hou, Asian Business Community Development
- Fred Jordan, San Francisco African American Chamber of Commerce
- Eddy Lau, Asian American Architects and Engineers
- Karen Nelson, CA Asian Pacific Chamber of Commerce
- Trinity Nguyen, Conference of Minority Transportation Officials, NorCal
- Uzoma Okoro, Sacramento Black Chamber of Commerce
- Zeke Patten, Black Business Association
- Lisa Vela, San Joaquin County Hispanic Chamber of Commerce
- Deborah Wilder, Women Construction Owners and Executives, USA