



M e m o r a n d u m

To:

SABRINA WATTS-JEFFERSON
Acting Assistant Director
Office of Civil Rights
Caltrans

Date: June 29, 2020

File: P3010-0653

From:

RHONDA L. CRAFT
Inspector General

Independent Office of Audits and Investigations

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Subject: Final Audit Report on Disadvantaged Business Enterprise Denials

Attached is the Independent Office of Audits and Investigations' final audit report on Disadvantaged Business Enterprise Denials. Your response has been included as part of the final report. This report is intended for your information and for Department Management.

Please provide our office with status reports on the implementation of your audit finding dispositions 60, 180, and 360 days subsequent to the transmittal date of this memorandum.

Senate Bill 1 requires the Inspector General to report at least annually, or upon request, to the Governor, the Legislature, and the California Transportation Commission with a summary of audit findings and recommendations. The summary along with this report and the status reports will be posted on the Independent Office of Audits and Investigations' Internet Web site.

We thank you and your staff for their assistance provided during this audit. If you have any questions or need additional information, please contact Alice Lee, Chief, Office of Project Delivery, at (916) 323-7953, or me at (916) 323 7863.

SABRINA WATTS-JEFFERSON

June 29, 2020

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Attachment

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INDEPENDENT OFFICE OF AUDITS AND INVESTIGATIONS

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California Department of Transportation - Disadvantaged Business Enterprise Denials

Background

Caltrans has a federal responsibility to ensure that firms competing for USDOT assisted contracts are not disadvantaged by unlawful discrimination. It is Caltrans' policy to be in compliance with 49 CFR, part 26 by ensuring Disadvantaged Business Enterprises (DBE) have an equal opportunity to receive and participate in USDOT assisted contracts, which includes ensuring that only firms that fully meet federal eligibility standards are permitted to participate as DBEs. Caltrans Office of Civil Rights (OCR), manages and administers the DBE program in accordance with this federal regulation. The federal regulation includes requirements for denying and de-certifying DBEs if eligibility standards are not met. The following are three DBE action types that may result in a denial decision made by Caltrans:

- DBE certification may be denied if the firm does not meet all certification eligibility standards per 49 CFR Part 26.
- DBEs may be de-certified due to noncompliance with the federal Annual Update Affidavit requirement and at any point after certification, if there is adequate evidence of noncompliance per 49 CFR part 26.86 (h)(i)(j) and 49 CFR part 26.87 requirements.
- DBEs that request additional work codes can be denied for not possessing the required/related work license and/or if the disadvantaged owner cannot show that they are able to control the firm within the scope of the additional work code.

Key Findings

Caltrans' DBE denials, including certification denials, additional work code denials, and de-certifications, generally complied with federal DBE regulations and were administered consistently, except for the following areas:

1. Certification decisions were not made within the 90-day federal requirement.
2. OCR did not suspend DBEs prior to their removal from the CUCP database consistent with CUCP procedures and federal regulations.

Key Recommendations

1. OCR should continue to improve their DBE certification process so decisions are made within 90 days and if decisions cannot be made within 90 days, DBEs are provided with a written notice explaining the specific reason(s) for the delay.
2. For DBEs that are noncooperative with AUA requirements, OCR should send DBEs a notice that they have been suspended and then suspend the DBEs in the CUCP database prior to removing them from the database and DBE program.



California Department of Transportation

Disadvantaged Business Enterprise Denials

Audit Report
P3010-0653
June, 2020



PREPARED BY:

Independent Office of Audits and Investigations – MS 2

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Summary, Objectives, Scope, Methodology, and Background

Summary

The Independent Office of Audits and Investigations (IOAI) completed an audit of the Department of Transportation's (Caltrans) Disadvantaged Business Enterprise (DBE) Denials. The purpose of this audit was to assess DBE denials by Caltrans and to determine if Caltrans policies, procedures, and practices for DBE certification denials, additional work code denials, and de-certifications comply with federal DBE regulations. Caltrans' DBE services are conducted by the Office of Civil Rights (OCR), formerly known as the Office of Business and Economic Opportunity.

Our audit determined that Caltrans' DBE denials, including certification denials, additional work code denials, and de-certifications, generally complied with federal DBE regulations and were administered consistently, except for the following areas:

- Certification decisions were not made within the 90-day federal requirement.
- OCR did not suspend DBEs prior to their removal from the California Unified Certification Program (CUCP) database as required by CUCP procedures and federal regulations.

Objectives and Scope

The objectives of the audit were to:

1. Determine if Caltrans' DBE denials, including certification denials, additional work code denials, and de-certifications, comply with federal and CUCP requirements.
2. Determine if Caltrans is administering DBE certification denials, additional work code denials, and de-certifications consistently.

The audit covered the period of July 1, 2017, through June 30, 2019. We conducted our audit from September 23, 2019, through April 16, 2020. Changes after these dates were not tested, and accordingly, our conclusions do not pertain to changes arising after April 16, 2020.

The scope of the engagement included Caltrans processes and practices that resulted in DBE certification denials, work code denials, and de-certifications that occurred within the audit period of July 1, 2017, through June 30, 2019. The support and justification for the denials and de-certifications were reviewed as well as the results of the applicants' appeals to the United States Department of Transportation (USDOT). The audit did not cover the content of the database as it was outside of the scope of the audit. To the extent possible, information from the DBE certification audit performed by IOAI, report issued on July 17, 2019, was relied upon for this audit.

Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We reviewed policies and procedures, collected and analyzed documents, and interviewed OCR staff, including supervisors and analysts with direct knowledge of areas relevant to the audit objectives, to gain an understanding of the processes, procedures, and practices.

During our audit period of July 1, 2017, through June 30, 2019, Caltrans received and processed 660 DBE applications, of which 543 were approved and certified and 117 were denied certification. During the same period, Caltrans de-certified 217 established DBEs, and 30 DBEs appealed OCR's decisions to the USDOT. OCR also received DBE action requests for additional work codes during our audit period. Because OCR does not track the DBE action requests by type, we randomly selected four months out of the two-year audit period where OCR identified 35 additional work code requests of which 10 were denied.

Of the 117 DBEs that were denied certification, we sample tested 14 DBE files (12%). Of the 217 DBEs that were de-certified, we sample tested 26 DBE files (12%). Our samples were randomly selected based on our assessment of the internal controls and risks of the OCR certification unit. We also tested the 10 additional work code request denials and 13 of 30 various DBE denials that were appealed to the USDOT and remanded back to OCR for re-evaluation.

Background

Caltrans has the responsibility of ensuring that firms competing for USDOT assisted contracts are not disadvantaged by unlawful discrimination. The USDOT requires that a Unified Certification Program, governed by Title 49 Code of Federal Regulation (CFR) part 26, be put into practice by each state to provide certification services to socially and economically disadvantaged individuals. The USDOT DBE regulations at 49 CFR Part 26 place primary responsibility for the certification process on state transportation agencies. Caltrans OCR manages and administers Caltrans' DBE program in accordance with this federal regulation. OCR is a member agency of the CUCP. The CUCP is a unified certification program of agencies certifying DBEs in California that share a database that tracks all DBE decisions made within California.

There are three ways that DBEs may be denied by Caltrans:

- DBE certification may be denied if the firm does not meet all certification eligibility standards per 49 CFR Part 26. However, Caltrans must provide the firm a written explanation of the reasons for denial, specifically referencing the evidence in the record that supports each reason.
- DBEs may be de-certified due to noncompliance with the federal Annual Update Affidavit (AUA) requirement. DBEs are required to annually certify that there have been no change in their DBE status and provide copies of their latest tax returns. DBEs may also be de-certified at any point after certification, if there is adequate evidence of noncompliance per 49 CFR part 26.86 (h)(i)(j) and 49 CFR part 26.87 requirements.
- A DBE that requests additional work codes can be denied for not possessing the required/related work license. Additionally, the DBE can be denied an additional work code if the disadvantaged owner cannot show that they are able to control the firm within the scope of the additional work code.

This report is intended as information for Caltrans management. The report is a matter for public record and will be placed on the IOAI's website, which can be viewed at <<https://ig.dot.ca.gov>>.

Views of Responsible Officials

We requested and received written responses to our findings from Caltrans Office of Civil Rights. These officials concurred with our findings. Please see Attachment for their response.

Findings and Recommendations

Conclusion

We determined Caltrans' Disadvantaged Business Enterprise (DBE) denials, including certification denials, additional work code denials, and de-certifications, generally complied with federal DBE regulations and were administered consistently, except for the following areas:

- Certification decisions were not made within the 90-day federal requirement.
- Office of Civil Rights (OCR) did not suspend DBEs prior to their removal from the California Unified Certification Program (CUCP) database consistent with CUCP procedures and federal regulations.

Finding 1: Certification Decisions Exceed the 90-day Federal Requirement

The OCR exceeded the 90-day federal requirement for new DBE certification decisions. Sample testing of 14 certification denials found that in eight instances (57%) DBE certification decisions took longer than 90 days to process (four of the eight took more than 150 days) and OCR did not document the reasons for the delay in their files nor provide written notice to the DBE explaining the reason(s) for the delay.

OCR stated it did not have a system to track the processing time for DBE certification decisions during our audit period. They also stated they were short staffed due to attrition. By not certifying DBE firms in a timely manner, OCR is not in compliance with federal regulations. DBE firms are also at risk of missing contracting opportunities.

For DBE applications, Title 49 Code of Federal Regulations (CFR) Part 26.83(k) requires that OCR "must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days upon written notice to the firm, explaining fully and specifically the reasons for the extension."

Note: This issue was reported as a finding in a previous audit report to OCR on July 18, 2019. Per our review, we determined OCR is currently using an Excel spreadsheet to track and monitor the processing time for DBE certification decisions to help ensure the 90-day deadline requirement is met.

Recommendation

OCR should continue to improve their DBE certification process so decisions are made within 90 days and if decisions cannot be made within 90 days, DBEs are provided with a written notice explaining the specific reason(s) for the delay.

Caltrans' Response Caltrans Office of Civil Rights concurs with the finding and recommendation. Please see Attachment for details of the response and action plan.

Finding 2: DBEs De-Certified Without Proper Suspension Process

Of the 217 DBEs that were de-certified in our audit period, we sampled 26 files and found that in all 26 instances OCR did not follow the required federal regulations and CUCP procedures for sending DBEs a notice that they were suspended and then suspending DBEs in the CUCP database prior to removing them from the database and DBE program. By not suspending DBEs that are noncooperative (did not provide required documents) in the database, Caltrans inappropriately allows firms to be considered for new contracts. This also allows DBEs to be included in percentages used to meet DBE contract goals on federally-funded contracts and thereby preventing other qualifying DBEs from participating. All 26 noncooperative DBEs should have been suspended for not providing the Annual Update Affidavit (AUA), which is required by DBEs annually to maintain their certification status. However, the suspended DBEs remained as eligible DBEs on the CUCP's database for an average of four and a half months from AUA due date before being formally decertified.

OCR stated the certification unit was understaffed and, therefore, did not perform the suspension procedure but that subsequent to the audit period, they are now in compliance and updating the CUCP database for suspended DBEs. However, per our review of OCR's supporting documentation, we were unable to verify the suspension procedures are being practiced.

Code of Federal Regulation 49, part 26.88 (b)(1) states in part, "A recipient may immediately suspend a DBE's certification without adhering to the requirements of section 26.87(d)...the DBE...fails to timely file an affidavit of no change under section 26.83(j)."

Code of Federal Regulation 49, part 26.88 (f) states "while suspended, the DBE may not be considered to meet a contract goal on a new contract, and any

work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal."

CUCP - Revised Annual Update Affidavit (AUA), No Change Declaration Process of CUCP Operational Procedures effective September 1, 2015, states in part, "...If an AUA is not received within 30 days from the date of the reminder letter, the California Unified Certification Program (CUCP) database generates a Suspension and Proposal to Remove Disadvantaged Business Enterprise Certification letter. This letter will state the firm is suspended in the CUCP database. At this time, recipients should suspend the firm in the CUCP database. During suspension, a DBE firm will not be able to bid on any contract as a DBE to meet contract goals. The Suspension and Proposal to Remove Disadvantaged Business Enterprise Certification letter will give the firm 30 days to either submit the requested AUA or appeal to a reconsideration official. If no response is received within 30 days and the firm does not submit the requested AUA or request reconsideration, the firm will be sent a "Final Notice" and will be removed from the DBE Program..."

Recommendation

For DBEs that are noncooperative with AUA requirements, OCR should send a notice that they have been suspended and then suspend the DBEs in the CUCP database prior to removing them from the database and DBE program.

Caltrans' Response

Caltrans Office of Civil Rights concurs with the finding and recommendation. Please see Attachment for details of the response and action plan.

Attachment A

Audit Response from the Office of Civil Rights

M e m o r a n d u m

To:
RHONDA L. CRAFT
Inspector General
Independent Office of Audits and Investigations

Date: June 5, 2020

File:

From:
SABRINA WATTS-JEFFERSON
Acting Assistant Director
Office of Civil Rights

Attached is the Office of Civil Rights (OCR) response to Draft Report(Report) from the Independent Office of Audits and Investigations (IOAI)'s Disadvantaged Business Enterprises Certification Audit No. P3010-0653.

The audit period for the Disadvantaged Business Enterprise (DBE) Certification Denial process was conducted between September 23, 2020, through April 16, 2020 for the period July 1, 2017, through June 30, 2019.

OCR has reviewed the Report's Findings and Recommendations and has provided responses as well as estimated completion dates.

It is our understanding that once our responses have been received, an official final audit report will be issued. Also, the official final audit report will contain a transmittal, providing instructions as to when we should start counting the follow-up dates: 60-, 180-, and 360- day status reports.

If you have any questions or need additional information, please contact Deborah Stewart, Office Chief, Certification, at (916) 324-1059, or me at (916)926-3120.

Attachment

Office of Civil Rights' Response to Independent Office of Audits and Investigations Draft Report

Independent Office of Audits and Investigations - Response to Draft Report

Audit Name: Disadvantaged Business Enterprise (DBE) Denials

Auditee: Caltrans Office of Civil Rights

Audit Number: P3010-0653

Audit Report Finding #1

Certification Decisions Exceed the 90-day Federal Requirement

IOAI Audit Recommendation

OCR should continue to improve their DBE certification process so decisions are made within 90 days and if decisions cannot be made within 90 days, DBEs are provided with a written notice explaining the specific reason(s) for the delay.

Auditee Response to Draft Report

- The Certification Branch will continue to monitor compliance daily and weekly using the Excel report from the CUCP database to track and monitor processing new applications in compliance with 49 CFR 26.83 (k): decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part (60 days for interstate applications). This time period may be extended once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

Staff Responsible

Office Chief/Deborah Stewart

Estimated Completion Date

5/26/2020

- The Certification Branch will create and submit a plan to the Acting Assistant Director for processing new applications in compliance with 49 CFR 26.83 (k): decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part (60 days for interstate applications). This time period may be extended once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

Staff Responsible

Office Chief/Deborah Stewart

Estimated Completion Date

5/29/2020

- Weekly, on Fridays by COB, the Certification Manager will submit to the Office Chief who will in turn submit to the Acting Assistant Director status of staff's work processed, by analyst, including a weekly running tally of the Certification Branch's total number of applications received, the status, and the number of fully completed applications for the week. In addition, The Monday Look Ahead Report will be submitted at the same time with the Certification Branch staff's workload by certification analyst including the firm names and number of firms for each analyst.

Staff Responsible

Office Chief/Deborah Stewart

Estimated Completion Date

Starting 5/29/2020 with no end date

- The Certification Manager will review all pending new DBE applications with the assigned Certification Analyst on a daily and weekly basis to determine if any certification decisions cannot be made within 90 days. If a decision cannot be made within 90 days, the Certification analyst will provide the applicant firm with a written notice explaining the specific reason(s) for the delay and the date the decision will be made (60 additional days from the 90th day). This date will be submitted to the Certification Manager who has the SSA responsible for maintaining the Pending New Applications excel spreadsheet record the new due date. The Certification Analyst will enter this information into the CUCP database record for the firm, in the Firm Activity Log tab, in the hard copy file case sheet as well as a reminder on their calendar.

Staff Responsible

Deborah Stewart

Estimated Completion Date

5/20/2020

- The Certification Branch Manager will a) review pending new DBE applications daily to ensure DBE certification decisions are made within 90 days for in-state applications b) reassign files, if necessary, in order to meet the 90 day deadlines c) ensures that, if a decision cannot be made within 90 days, the applicant firm is provided a written notice explaining the specific reason(s) for the delay and the date the decision will be made (60 additional days from the 90th day). This date will be submitted by the Certification Analyst to the SSA responsible for maintaining the Pending New Applications excel spreadsheet. The Certification Analyst will enter this information into the CUCP database record for the firm, in the Firm Activity Log tab as well as a reminder on their calendar.

Staff Responsible

Deborah Stewart

Estimated Completion Date

5/26/2020

- First Level Quality review: On a daily basis, the Certification Manager will prioritize pending new DBE application decisions for quality review. If there are any issues with the decision, the Certification Manager will meet with the Certification Analyst to resolve the issue(s). The Certification Analyst will resolve the issue(s) immediately and return it to the Certification Manager. The Certification Manager confirms the issue (s) has been resolved and submits the decision to the Office Chief for final review.

Staff Responsible

Office Chief/Deborah Stewart

Estimated Completion Date

5/20/2020

- Final review: On a daily basis, the Office Chief will prioritize pending new DBE application decisions for final review. If there are any issues with the decision, the Certification Manager will be advised immediately. The Certification Manager will meet with the Certification Analyst to resolve the issue(s). The decision will be resubmitted to the Office Chief for final signature no more than one business day later. The Office Chief will process them through the CUCP to ensure DBE certification decisions are made within 90 days for in-state applications and 60 days for interstate applications.

Staff Responsible

Office Chief/Deborah Stewart

Estimated Completion Date

5/20/2020

- The Certification Analysts are required to report on a daily basis to the Certification Manager any and all files that have been completed, this means all required documents for determining DBE certification eligibility have been received from the applicant. The Certification Manager reports these dates to the SSA who inputs them into the tracking instrument, an excel spreadsheet. This excel spreadsheet has formulas to calculate (from when the required documents were received) the 90 day deadline for making a certification decision on in-state applications and 60 day deadline for making a decision on interstate applications . The SSA provides this report to the Certification Manager at least twice weekly. Should deficiencies with staff meeting these deadlines be found, the Certification Manager is responsible for implementing the corrective action process will be followed in order to remedy the deficiencies.

Staff Responsible

Deborah Stewart

Estimated Completion Date

5/22/2020

Audit Report Finding #2
DBEs De-certified Without Proper Suspension ProcessIOAI Audit Recommendation

For DBEs that are non-cooperative with AUA requirements, OCR should send a notice that they have been suspended and then suspend the DBEs in the CUCP database prior to removing them from the database and DBE program.

Auditee Response to Draft Report

- Submit to Acting Assistant Director plan on processing annual updates affidavits (AUA) and 5th year AUAs in compliance with 49 CFR 26.83 (h)(i), (j), (k), 26.87 and 26.88. Plan to include: 1) finalization of the CUCP Annual Update Affidavit (AUA), No Change Declaration Process which includes the suspension process and eliminating backlog 2) processes for suspending, removing and lifting suspensions of DBE firms in the CUCP database 3) notifying Contract Evaluation and Data Analysis/Supportive Services branches of suspended and reinstated DBE firms 4) implementing B2Gnow suspension procedures.

Staff Responsible

Deborah Stewart

Estimated Completion Date

6/5/2020

- Distributed Annual Update Affidavit (AUA), No Change Declaration, Procedures, CRT-004 to Certification Branch staff.

Staff Responsible

MaryLee Miglino

Estimated Completion Date

5/21/2020

- Meet with the CUCP Oversight and Documents Committees to draft CUCP Annual Update Affidavit (AUA), No Change Declaration Process.

Staff Responsible

Deborah Stewart

Estimated Completion Date

7/1/2020

- Discuss draft CUCP Annual Update Affidavit (AUA), No Change Declaration Process at CUCP Monthly Review Meeting.

Staff Responsible

Deborah Stewart

Estimated Completion Date

6/10/2020

- Vote on final CUCP Annual Update Affidavit (AUA), No Change Declaration Process at CUCP Executive Committee Meeting.

Staff Responsible

Office Chief

Estimated Completion Date

6/17/2020

- Review with Certification Branch Staff the final CUCP Annual Update Affidavit (AUA), No Change Declaration Process.

Staff Responsible

Office Chief

Estimated Completion Date

6/18/2020

- Certification Manager to email Contract Evaluation Branch and Data Analysis/Supportive Services Branch a report daily of DBE firms suspended and removed that day to ensure suspended DBE firms are not considered for new contracts and/or be included in percentages used to meet DBE contract goals on federally-funded contracts and preventing other qualifying DBEs from participating. Report will also include firms whose suspension was lifted.

Staff Responsible

Deborah Stewart

Estimated Completion Date

Daily starting 5/26/20

- Submit weekly to the Acting Assistant Director a running tally of the Branch's total number of AUAs received, the status, and the number of AUAs completed. Include the number of suspensions, removals and reinstatements, and 30 day and 60 day reminder notices sent.

Staff Responsible

Deborah Stewart

Estimated Completion Date

5/22/20, 5/29/20, 6/5/20, 6/12/20, 6/19/20, 6/26/20, 7/3/20, 7/10/20, 7/17/20, 7/24/20

- Additional staff assigned to process AUA: Anna Silva/ Dolores Gilbert AUA processing support functions (3 days/week, 9 to 4 pm).

Staff Responsible

Sabrina Watts-Jefferson

Estimated Completion Date

5/20/2020

- Distribute Annual Update Affidavit (AUA) received.
Staff Responsible
Deborah Stewart
Estimated Completion Date
6/12/2020
- Additional staff trained in AUA processing: Anna Silva.
Staff Responsible
Deborah Stewart
Estimated Completion Date
5/20/2020
- AUAs received assigned by SSA to Certification analysts (including as telework assignment when not on their rotation in the office). Documents are forwarded to each Certification analyst by SSA who assigns all AUAs in the CUCP. SSA runs weekly AUA reports for Certification Manager. Certification analysts report daily AUAs completed, suspensions, lifting suspensions and removals to the Certification Manager. Certification Manager sets deadlines, creates and implements monitoring system for work completion on a daily basis, sets priorities and deadlines. Should deficiencies with staff meeting these deadlines be found, the corrective action process will be followed in order to remedy these deficiencies.
Staff Responsible
Deborah Stewart
Estimated Completion Date
5/25/2020
- Backload of AUA eliminated.
Staff Responsible
MaryLee Miglino and Deborah Stewart
Estimated Completion Date
7/28/2020
- Implement B2Gnow AUA/5th year procedures including suspensions, lifting suspensions and removals. Create, document and deliver staff training, communication to and training of DBE certified firms, weekly reporting to Acting Assistant Director, daily reporting to Contract Evaluation and Data Analysis/ Supportive Services Branches.
Staff Responsible
Office Chief
Estimated Completion Date
12/1/2020

- Monitor for continued compliance according to plan submitted on June 5, 2020 to Acting Assistant Director for processing annual updates affidavits (AUA) and 5th year AUAs in compliance with 49 CFR 26.83 (h)(i), (j), (k), 26.87 and 26.88. Includes suspensions, lifting suspensions and removals.

Staff Responsible

Office Chief and Deborah Stewart

Estimated Completion Date

Daily/weekly