

2018 ACCA NATIONAL TRAINING INSTITUTE

Managing DBE/Diversity Programs in a Design-Build Environment

Presented by

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Introduction

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Class

Show of hands introduction





Agenda

-
- 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





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- Overview of Alternative Delivery /Design-Build Procurement





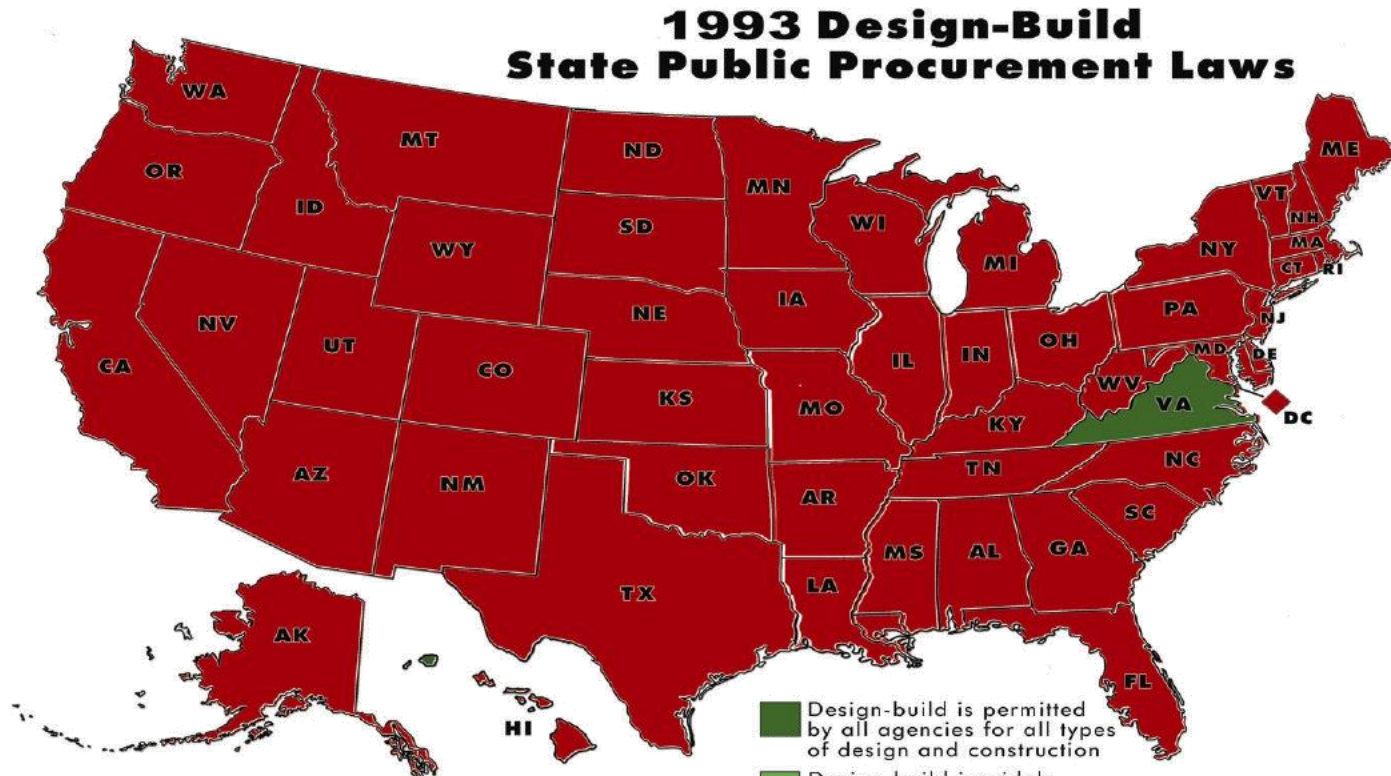
Overview of DB and Alternative Delivery Projects

- **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



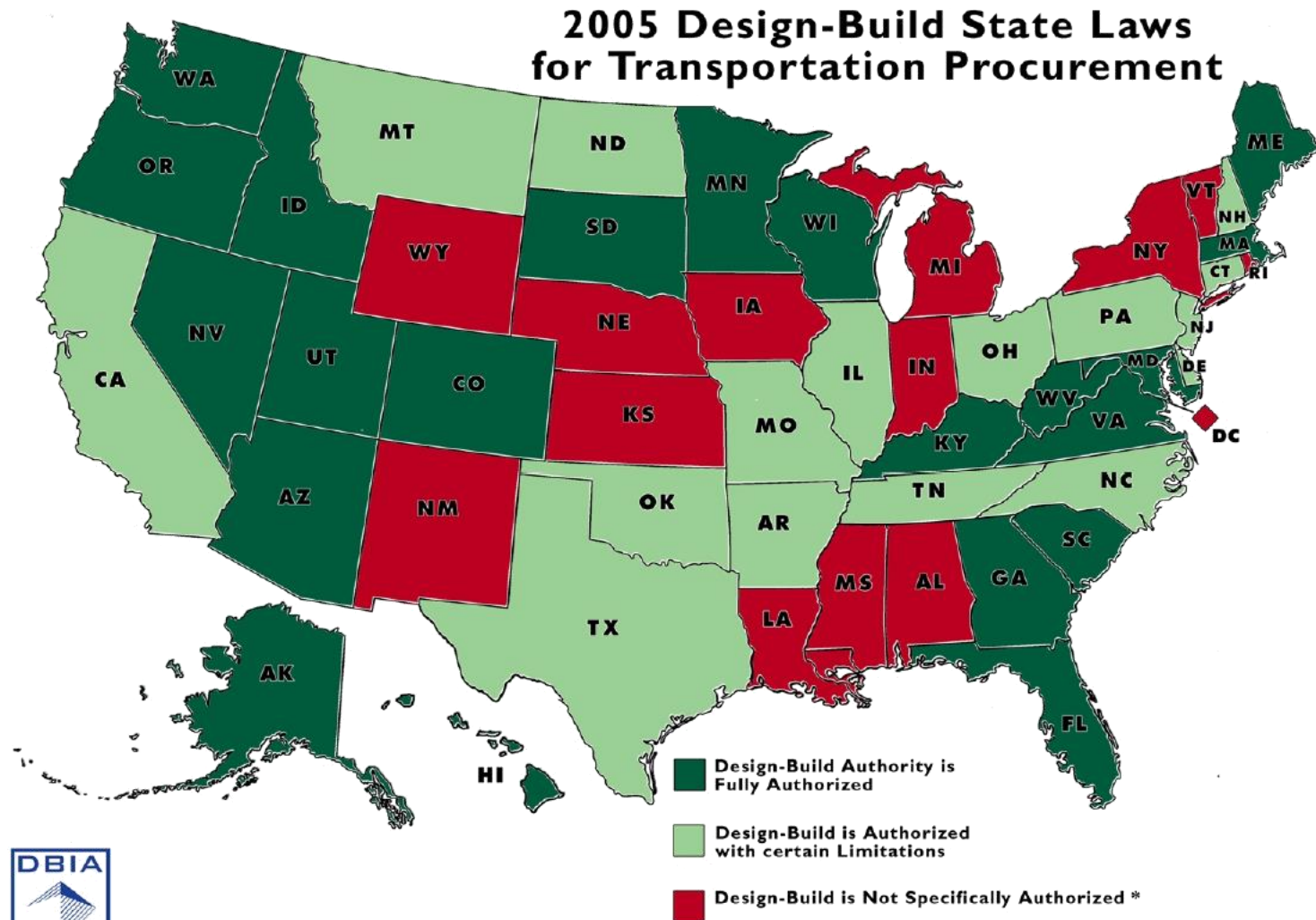
- Design-build is permitted by all agencies for all types of design and construction
- Design-build is widely permitted
- Design-build is a limited option
- Design-build is not specifically authorized for public agencies *

* Certain states allow design-build procurement by case law.





2005 Design-Build State Procurement Laws

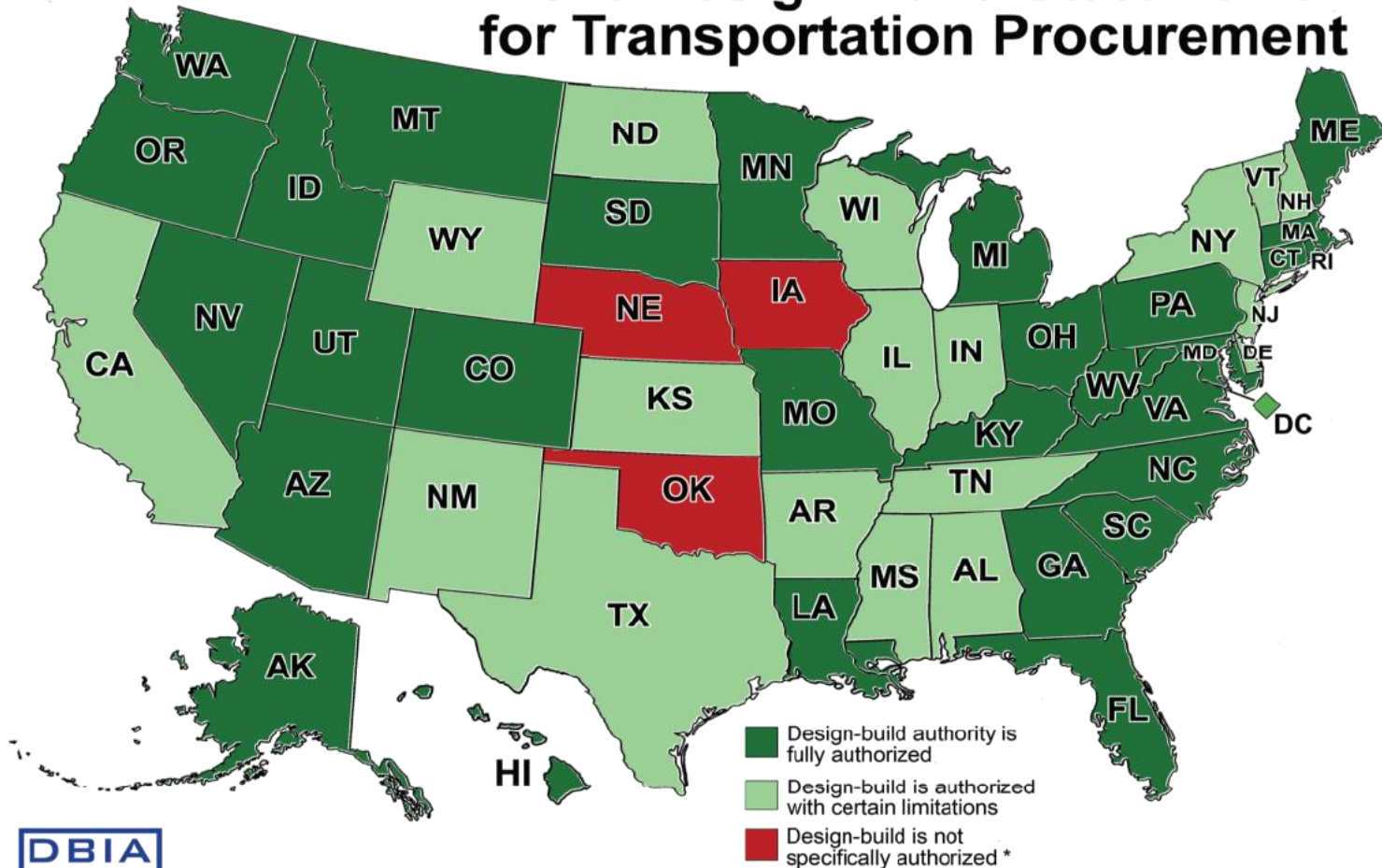


* certain states allow design-build procurement a result of case law



2013 Design-Build State Procurement Laws

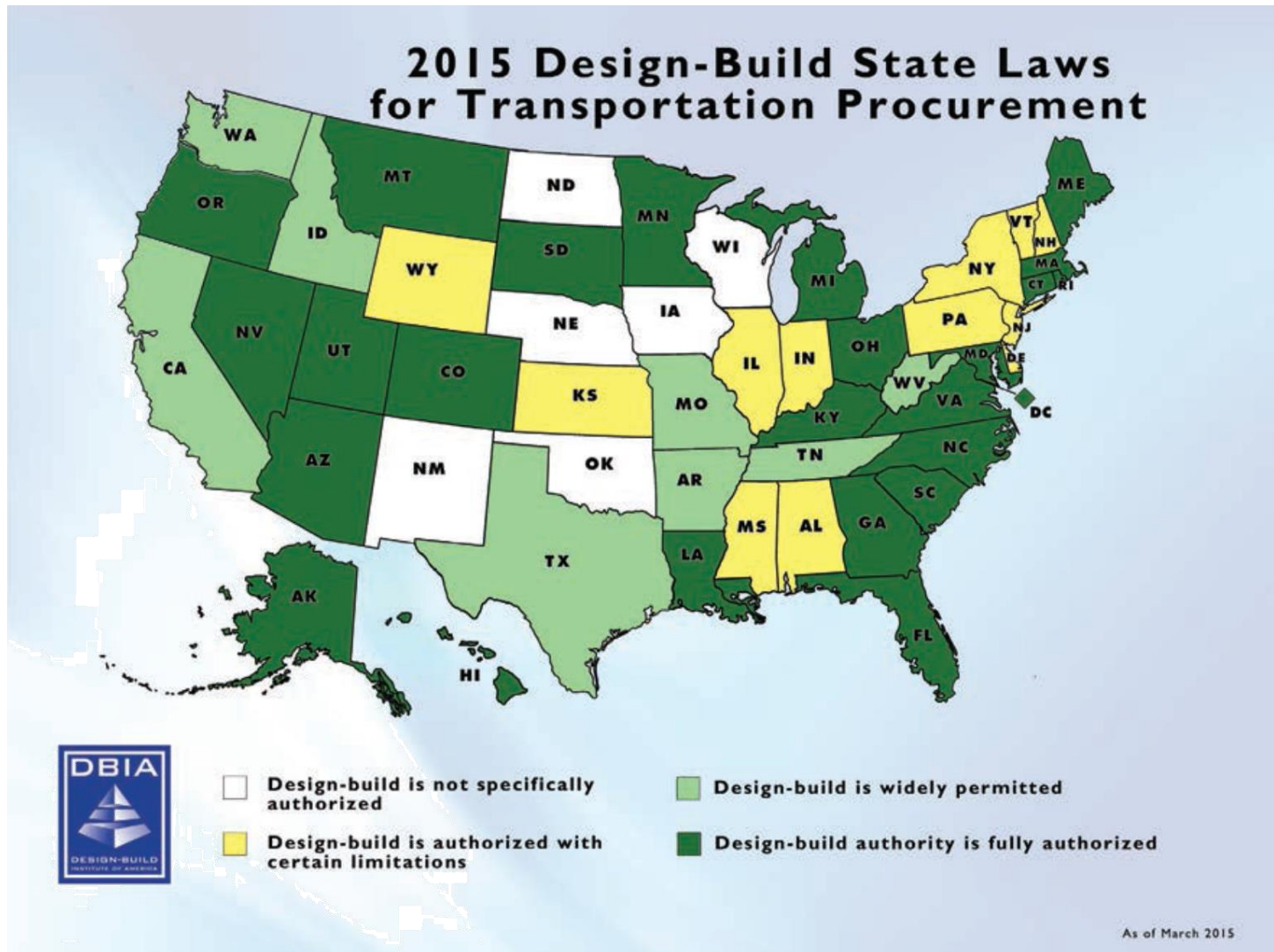
2013 Design-Build State Laws for Transportation Procurement



* Certain states allow design-build procurement as a result of case law.

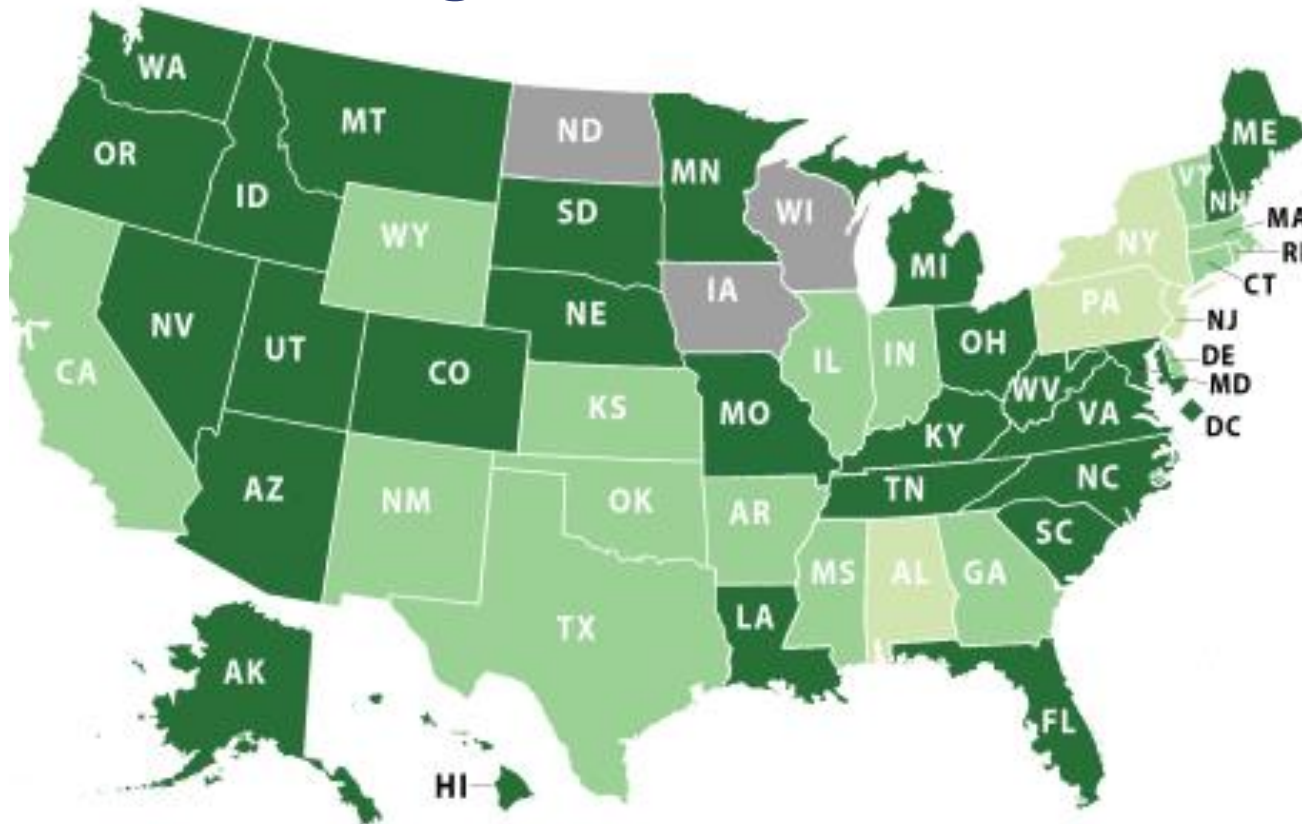


2015 Design-Build State Procurement Laws





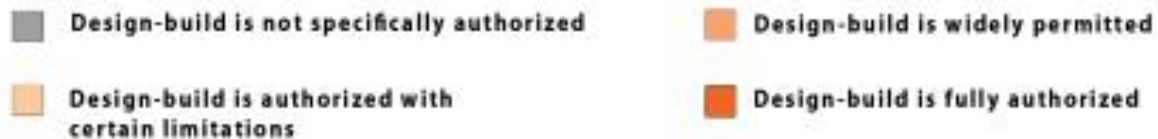
2017 Design-Build State Authorization



- Design-build is limited to one political subdivision, agency or project
- Design-build is a limited option

- Design-build is widely permitted
- Design-build is permitted by all agencies for all types of design and construction

As of August 2017



Page 11

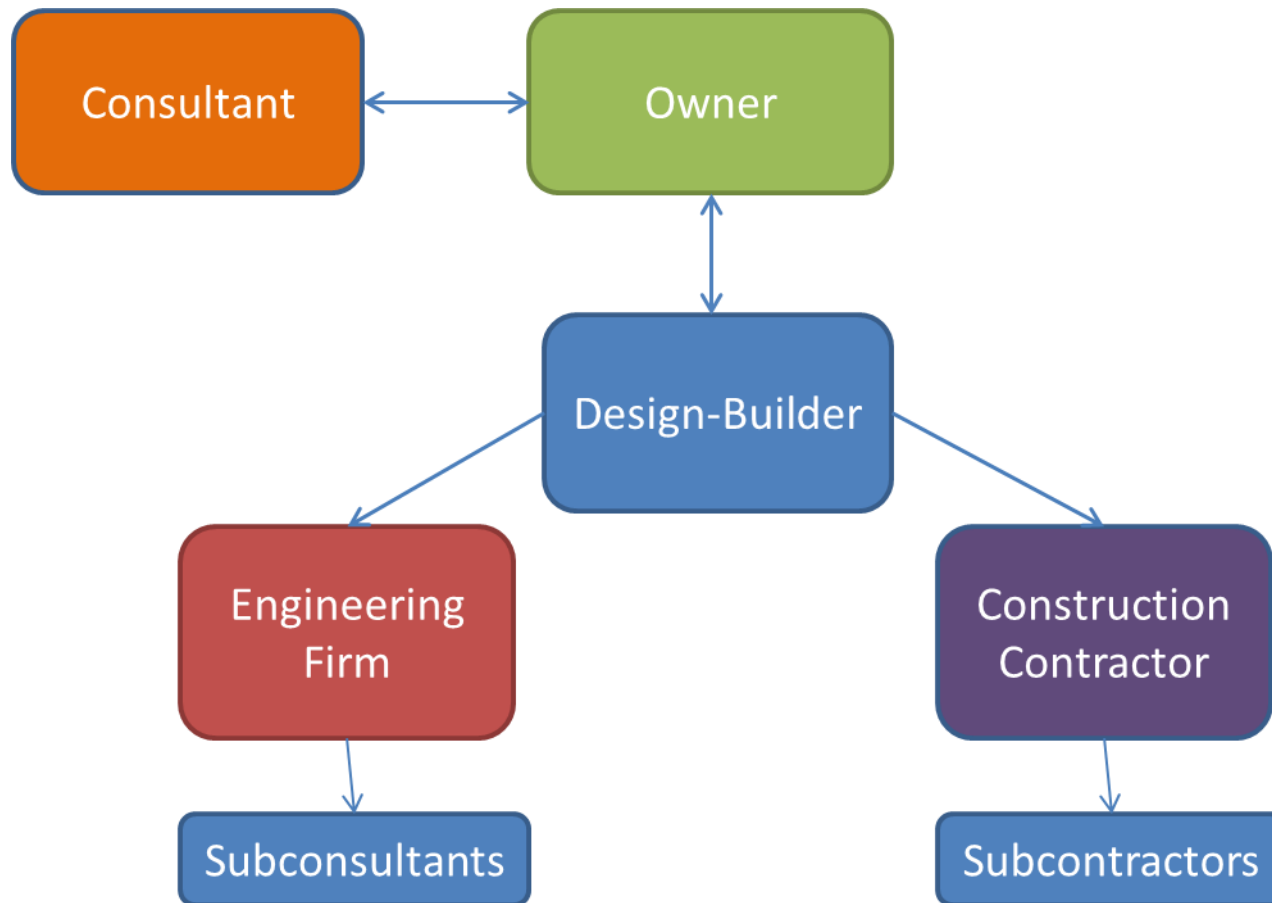


Alternative Delivery Method

Summary review of
Design-Build 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 Comparison

- **Benefits of Design Build Projects**

Metric	Design-Build V. Design-Bid- Build
Unit Cost	6.1% lower
Construction Speed	12% faster
Delivery Speed	33.5% faster
Cost Growth	5.2% less
Schedule Growth	11.4% less
Source: Construction Industry Institute (CII) Penn State research comprising of 351 projects. The study includes varied project types and sectors.	

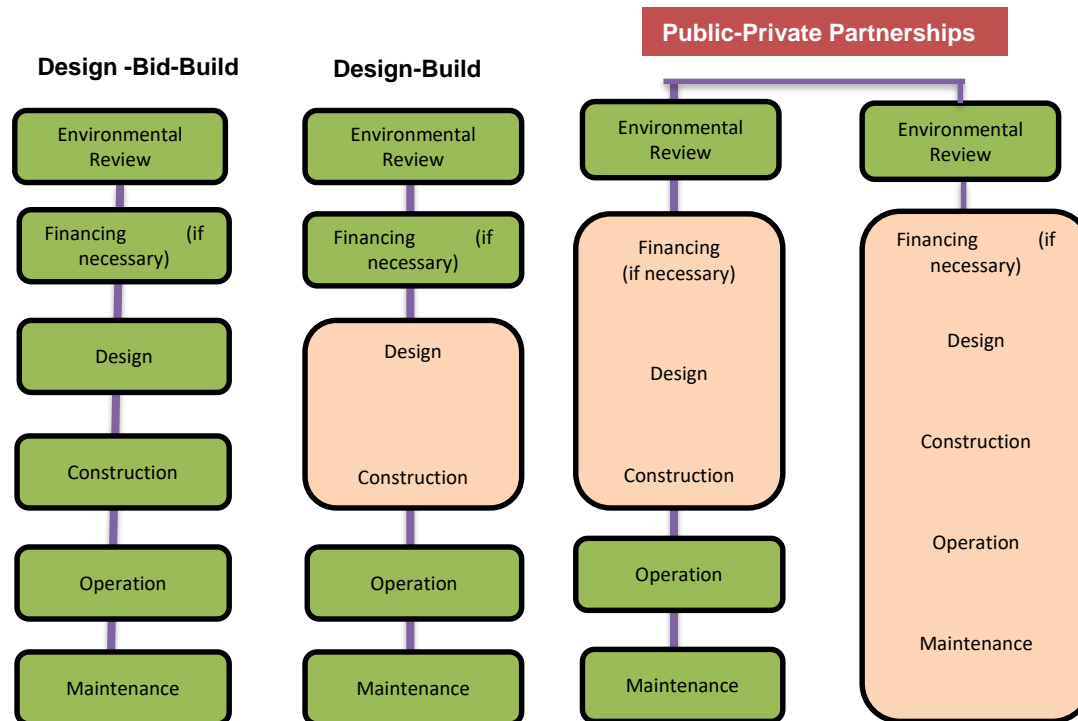


Not all Design Build environments are the same..

- Traditional Design Build (DB)
- Design Build combined with other elements
 - DBOM (Operate and Maintain)
 - DBFOM (Finance, Operate and Maintain)
 - P3 (Public Private Partnership)



Design Build contracts \neq Public Private Partnership (P3) contracts



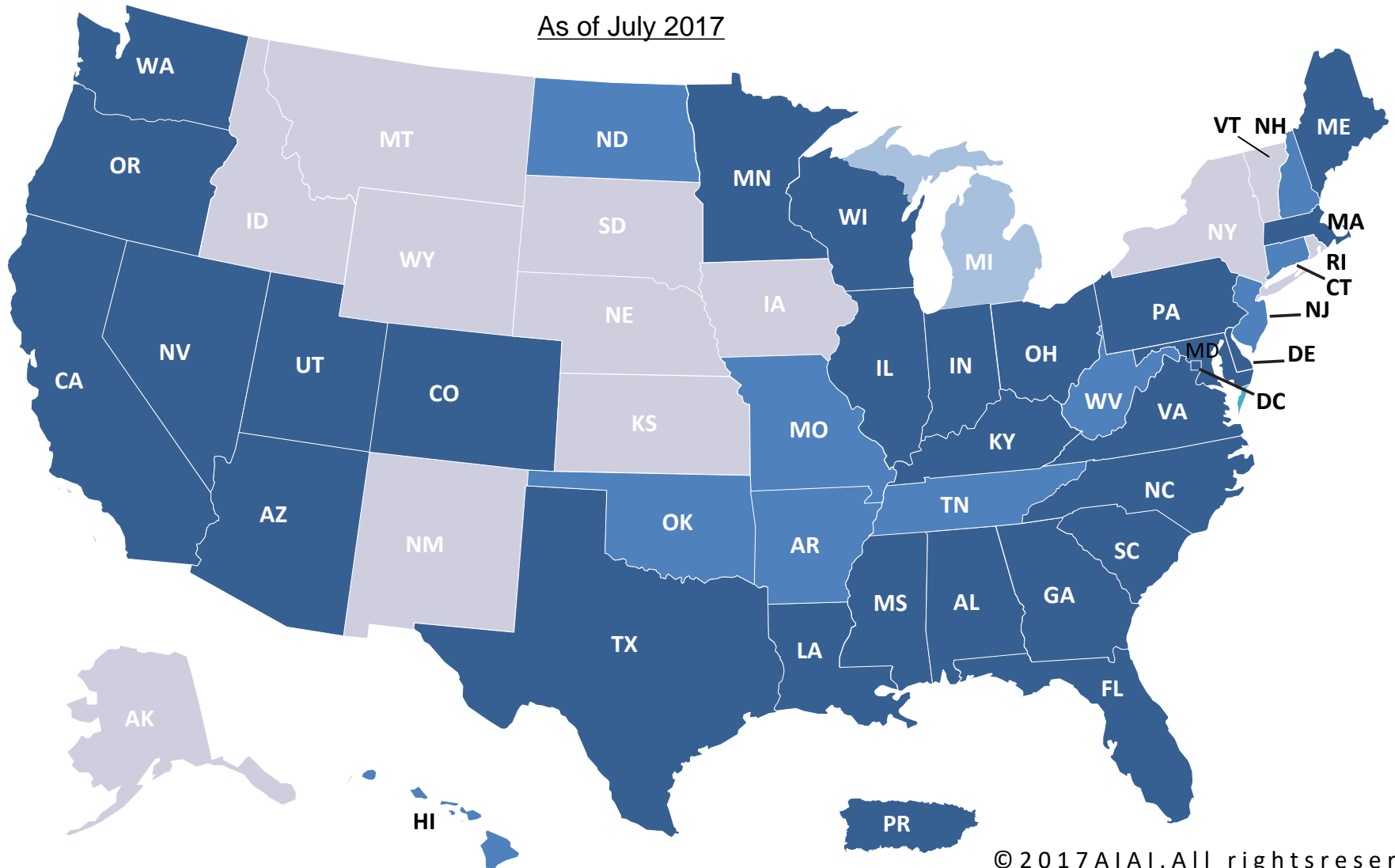
■ Broad P3-Enabling or Transportation P3 Legislation

■ Sector- or Project-Specific Legislation

■ No P3-Enabling Statutory Authority

37 states have P3 legislation plus DC & PR
14 states have vertical authority plus DC & PR
13 states have water authority plus DC & PR

As of July 2017





States use design-build for these project types



95%
highways



65%
bridges



9%
railroads

Selection Processes Owners Use



How and When Design-Build is Used

2016 Design-Build Institute of America Survey



Key Concepts for Diversity Programs

Goals Setting and
Compliance on
Alternative
Delivery/Design-Build
delivery procurement



Key Diversity Program Concepts

- Preparing for Alternative Delivery Procurements
 - Goal Setting
 - Solicitation language and requirements
 - Pre Award Documents
- Managing Diversity Programs 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 commit to meeting the goal(s).
 - Hold Contractor to DBE/Diversity Commitments
 - Monitor contractor DBE/Diversity performance after award

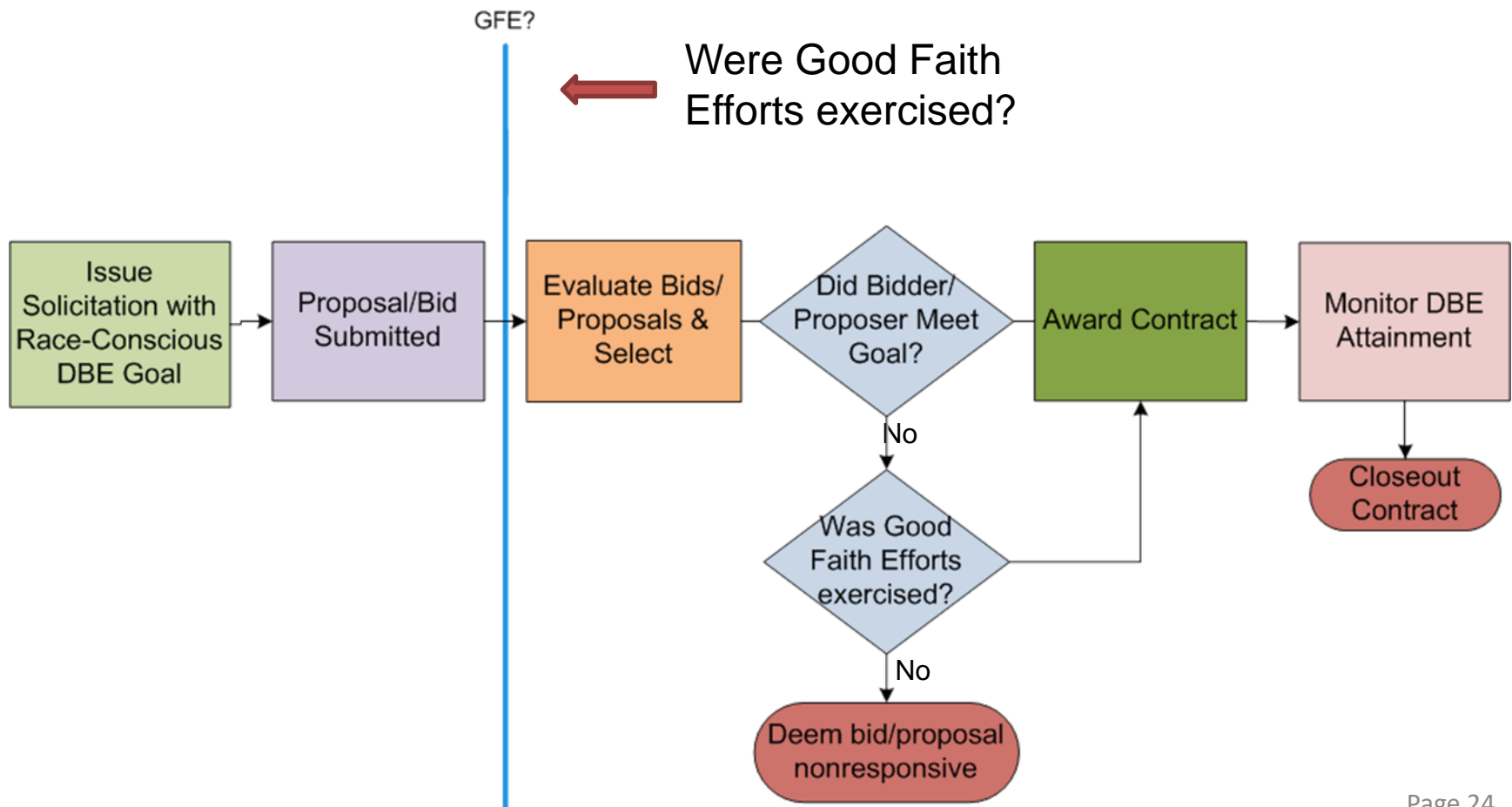
DBE/Diversity Goals Strategies- Traditional Procurement v. Alternative Delivery/DB Procurement

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	



DBE/Diversity Goal Approaches for Design Build Projects

Traditional DBE/Diversity Contract Goal Approach



**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



How do we manage this?

- 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**





Monitoring Good Faith Efforts

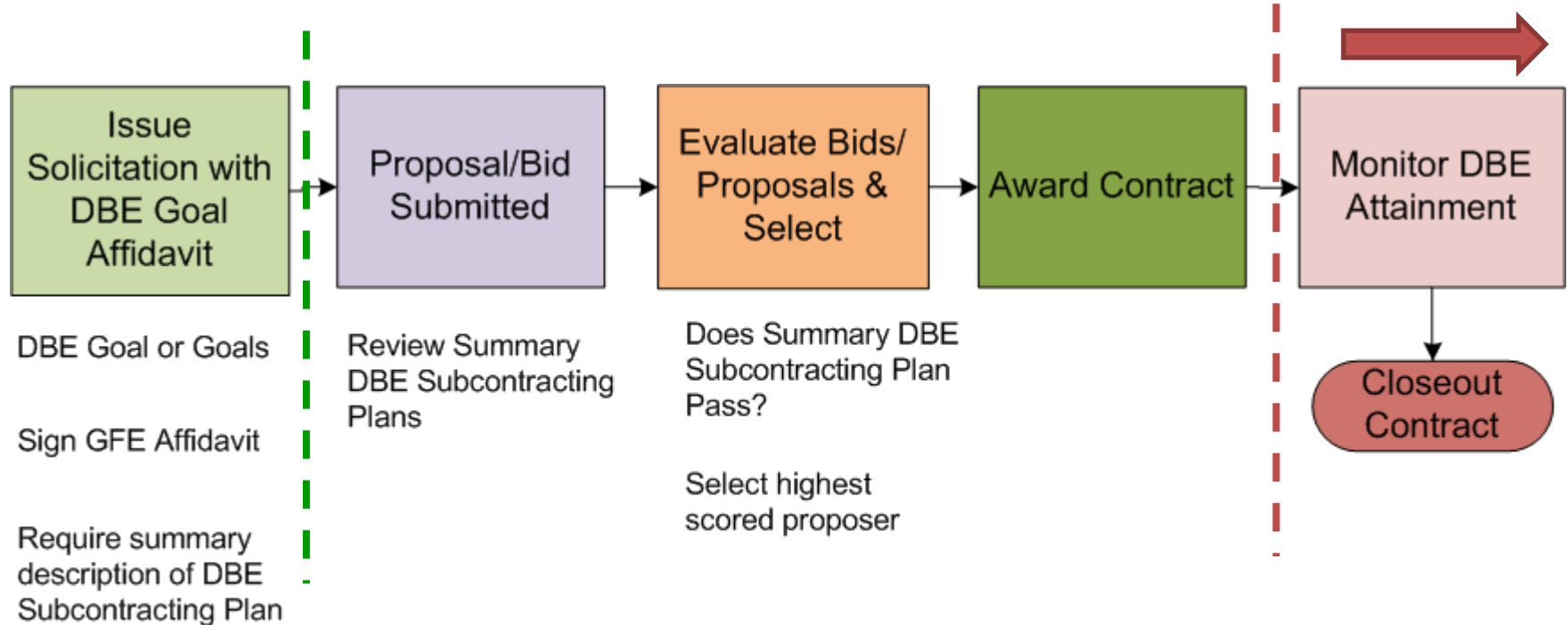
- Whatever Strategy You choose
 - DB approach requires exercising good faith efforts to solicit DBE/Diverse firms throughout performance
 - This is why monitoring a **subcontracting plan** is important





DBE/Diversity Goal Approaches for Design Build Projects

Alternative Delivery Method DBE/Diversity Contract Goal Approach





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 Strategies for Success

Maximizing Diversity
participation on
Alternative
Delivery/Design-Build
delivery procurements



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)



Advantages of Design Build Contracts for Diverse/DBE firms

Expanded Outreach and Opportunities:

- Able to continue contract opportunities after award for both Design/Build and O&M phases
- Partner with programs and other established trainings such as the USDOT Bonding and Education program.

Flexibility with contracting and opportunities

- Unbundling
- Payments
- Post Award Opportunities
- Risk taking measures with small Diverse/DBE firms to expand into other scopes of work and other projects



Disadvantages of Design Build Contracts for Diverse/DBE firms

- Accelerated Schedule:
 - Short time to perform with little notice for both Design/Build and O&M phases
- Limited Budgets due to Guaranteed Price
- Uncertainty and Risk
 - Design schedule in conjunction with Construction
 - Unknown quantities and pricing
 - Estimates and Bidding
 - Risk taking measures with small Diverse/DBE firms to expand into other scopes of work and other projects



Key Issues to Watch Out For on Design Build Projects

- DBE/Diversity Compliance
 - Design/Professional Services DBE participation
 - Furnish and Install Subcontractors
 - Suppliers
 - Joint Checks
 - Trucking
- Workforce Development
 - Administrative Requirements
 - Certified Payroll
 - Local Hiring Initiatives



Key Strategies for Prime Contractors

- Educate Everyone about DBE/Diversity in Design Build especially P3...not your “typical” project
 - Internal-all levels in the organization
 - Key concept: DBE/Diversity participation still expected
 - Management
 - Mid-Management
 - Subcontractors
 - External- especially the DBE/Diversity community
 - Key concept: Different type of contract..... different approach
 - DBE/Diverse firms
 - Community/Political leaders
 - DBE/Diversity related organizations and groups



Key Strategies for Prime Contractors

- Active Participation at all phases
 - Early especially with Procurement and construction to incorporate DBE/Diversity consideration for each opportunity
 - Often- consistent – stay informed
 - Internal meetings
 - Pre Construction meetings
- Communicate DBE/Diversity expectations and processes from the beginning and throughout



Key Strategies for Prime Contractors

- Effective and Consistent Monitoring
 - Project responsibility not just DBE/Diversity office
 - Be proactive NOT reactive
- Communicate and Coordinate with Owner
 - Advocates not Adversaries in achieving DBE participation
 - Partnering not Punishing for compliance
- Re-Educate the internal and external communities consistently



Best Practices & Lessons Learned

Discussion



Program Elements for Design Build Projects



During RFP Process –
Certificate to comply
with GFE to meet DB
Goal



DBE Performance Plan
Summary – pass/fail



DBE Performance Plan
due at the beginning of
project



Subcontractors added
throughout project



No requirement to issue
bid packets with goals



Red Flags for Compliance are the Same!

- Trucking
- Material Suppliers
- Joint Checks
- Goal Credit
 - DBE Program
 - certification after award
 - NAICS Codes
- Use of lower tier non-diverse subcontractors

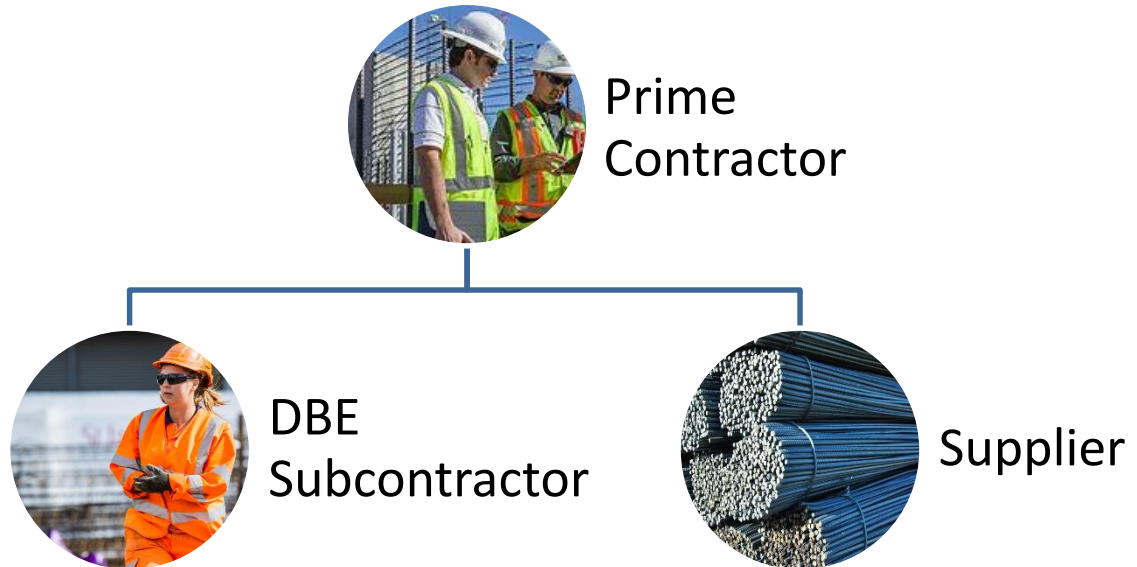


Program Elements for Design Build

- **Joint Check**

- Compliance with joint check guidance
- Require Joint check agreement
- Review each invoice requiring joint check
- Receive copy of each joint check
- Visit inventory yard to determine proper segregation of materials
- Minimize duration of joint check use

Prime Contractor Pays Subcontractor and Supplier with 1 check





Trucking Credit for Non-DBE Truckers

- Must get approval before implementing
- Based on value of trucking services – not number of trucks
- DBE credit for non-DBE trucking dollars is compared to the DBE trucking dollars
- Know the rules before applying credit toward the DBE goal



Program Elements for Projects



Compliance reviews

Commercially useful function reviews

Invoice reviews – sample audit each year

Subcontract reviews

- Diversity flow downs
- Diversity commitment amounts



Quarterly meeting with contractor team



Partnership approach to resolve Diversity issues



Let's look at 4 Alternative Delivery Projects



State Route 91 Corridor Improvement Project – FHWA funded



LBJ Express/I-635 Managed Lanes Project - FHWA funded/Public Private Partnership (P3)



Great Hall Rehabilitation Project/Denver International Airport – Locally and Privately funded/P3



Mid-Coast Corridor Transit Project – FTA funded



State Route 91 Corridor Improvement Project





SR-91 Design Build Project

- State Route (SR) 91 Corridor Improvement Project – Design Build
- Owner: Riverside County Transportation Commission
- Award and Goal Information:
 - Total investment: \$1.4 Billion
 - DB award amount: \$629 Million
 - Change Orders: \$30 Million
 - Total Contract Amount: \$659 Million
 - Funding: TFIA Loan - FHWA
 - DBE Contract Goal 9.4%
 - DBE Participation for Credit – 12%
 - Total DBE Participation – 16.14%





LBJ Express/IH 635 Managed Lanes Project

- LBJ Express/Interstate 635 Managed Lanes Project – Design Build
- Owner: Texas Department of Transportation (TxDOT)
- Award and Goal Information:
 - Award amount: \$3.1 Billion
 - Total DB Contract Amount: \$2.1 Billion
 - Funding: FHWA Tifia Loan/Private Financing
 - DBE Contract Goals:
 - 12.12% Design/Professional Services
 - 12.12% Construction





Denver International Airport Great Hall Renovation Project

- Denver Airport Great Hall – Design Build/P3
- Owner: Denver International Airport/City & County of Denver
- Award and Goal Information:
 - Award amount: \$1 Billion
 - Total DB Contract Amount: \$650 Million
 - Funding: Local Funding/Private Financing
 - MWBE Contract Goals:
 - 33% Design/Professional Services
 - 18% Construction





Commitment to Diversity Participation

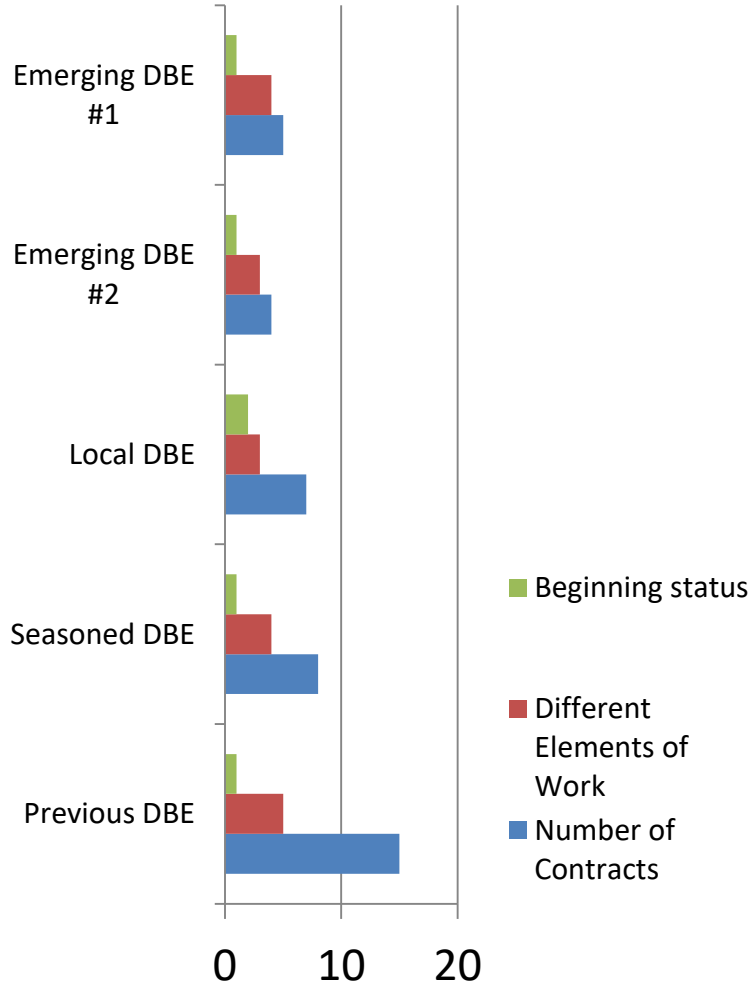
P3/Design Build model proven for achieving and exceeding established Diversity goals

Project	Diversity Goal (s)	Diversity Achievement	Diversity Participation Amount	Diversity Contracts	# of Firms (Prof Svcs/Const)	Project Completion?
North Tarrant Express Seg 1 & 2W*- Texas	12.12%/12.12 DBE	21%*	\$217,000,000	193	52-77 (129) DBE	Completed
LBJ Express* - Texas	12.12%/12.12 DBE	20%*	\$290,388,200.02	222	40-96 (136) DBE	Completed
North Tarrant Express Seg 3A - Texas	6% DBE	13% (Committed to Date)	\$100,000,000	109	83 DBE	Closeout
I-77 Managed Lanes Project- North Carolina	12% DBE	10% (Committed to Date)	\$ 46,055,905	40	37 DBE	Ongoing- 2019
Transform I-66 (Outside the Beltway) - Virginia	15% DBE/ 27% SWaM	1.94%D/2.10%S (Committed to Date)	DBE \$ 24, 833,475.82 SWaM \$ 28, 866,246.36	30/33	DBE: 30 / SWaM: 31	Ongoing-2022
Great Hall Project-Colorado	33%/18% MWBE	23%/7% (Committed to Date)	\$6,506,513/ \$40,809,750	28	19-7 (26) MWBE	Ongoing 2022



DBE Firm Success Stories:

Growing Capacity and Building Relationships



Building capacity in Heavy Highway Work:

- **Emerging company #1**
 - 1st contract for Tree cutting
 - Able to expand the company resources by purchasing additional equipment and building crews for work
 - Diversify skill set with four different elements of work (Misc Site Prep., Misc. Concrete work, and ITS)
 - Six contracts directly with DB Contractor and expanded work in Highway market
- **Emerging company #2**
 - Able to expand the company resources by purchasing additional equipment and building crews for work
 - Diversify skill set with MSE Wall work and work on other projects and Developer
 - Four contracts directly with two local projects & Developer and expanded work in Highway market

Building capacity in the Resources to do the Work:

- **Local DBE company**
 - 1st contract for Miscellaneous excavation and hauling
 - Able to expand the company resources by purchasing additional equipment for work in those elements of work
 - Seven contracts not only directly with DB Contractor but also with several large subcontractors on other projects

Building capacity in the Diversification of Work:

- **Seasoned DOT DBE**
 - 1st contract for Furnish and Installation of Rebar
 - Expand the self performance division of the company (Install MSE Walls, Facie Panel and Misc. Structure work)
 - Eight contracts on two contracts North Texas projects and other projects outside of the area
 - Graduated from the DBE program
- **Previous Ferrovial DBE subcontractor**
 - 1st contract for Potholing
 - Diversify skill set with five different elements of work (Drainage, Misc. Excavation, Utility Relocation, Jack & Bore (Tunneling)
 - Fifteen contracts on both LBJ, NTE and NTE3 contracts



Mid-Coast Corridor Transit Project

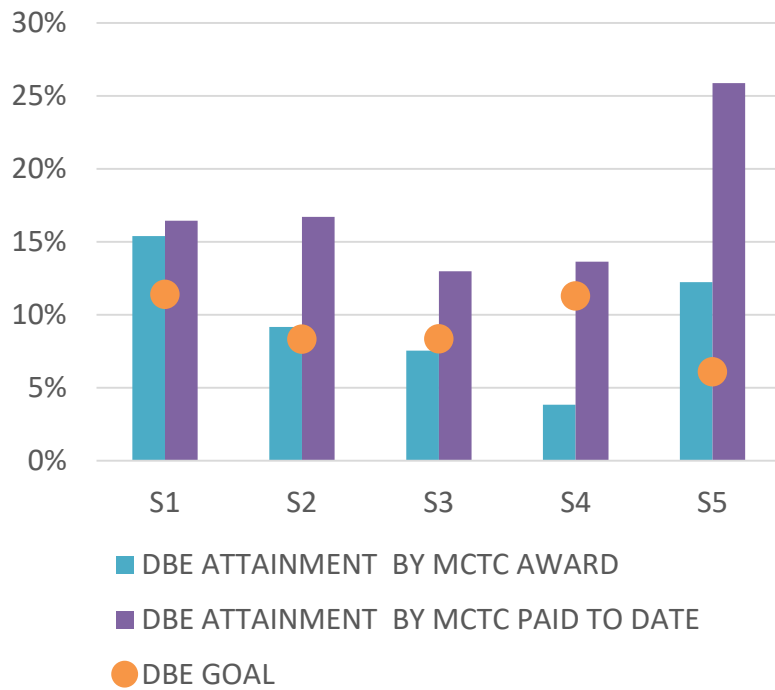
- Construction Manager / General Contractor (CM/GC)
- Owner: San Diego Association of Governments
- Award and Goal Information:
 - Award amount: \$1.166 Billion
 - Change Orders: \$40 Million
 - Total Contract Amount: \$1.206 Billion
 - Funding: FTA
 - DBE Contract Goals: Various





DBE GOAL ATTAINMENTS BY SUPPLEMENTS

DBE GOAL ATTAINMENTS BY SUPPLEMENTS THROUGH JUNE 2018

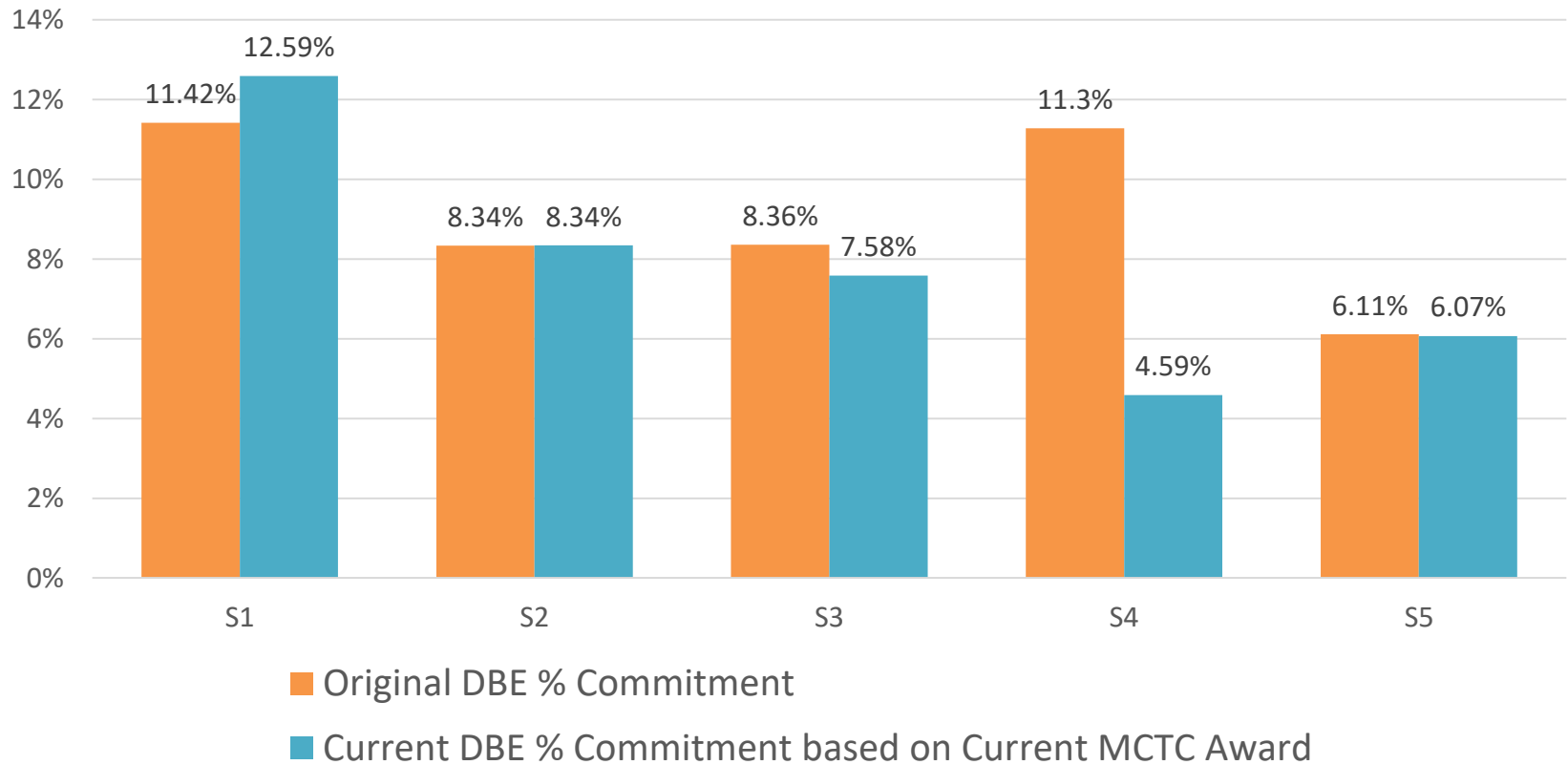


SUPPLEMENT	S1	S2	S3	S4	S5
DBE Goal	11.40%	8.34%	8.36%	11.30%	6.11%
DBE Attainment by MCTC Award	15.39%	9.17%	7.55%	3.84%	12.25%
DBE Attainment by MCTC Paid to Date	16.46%	16.72%	12.98%	13.64%	25.88%



DBE COMMITMENTS BY SUPPLEMENTS

DBE COMMITMENTS*



*Based on DBE Commitment Forms



DBE 1:1 TRUCKING CREDIT

\$12,921,110

**Dollars to DBE Truckers
Total to Date**

\$2.5M

\$156,322

**Non-DBE Dollars for
DBE Credit June 2018**

\$2.0M

\$1,936,495

**Non-DBE Dollars for
DBE Credit Total to
Date**

\$1.5M

\$11,000,000

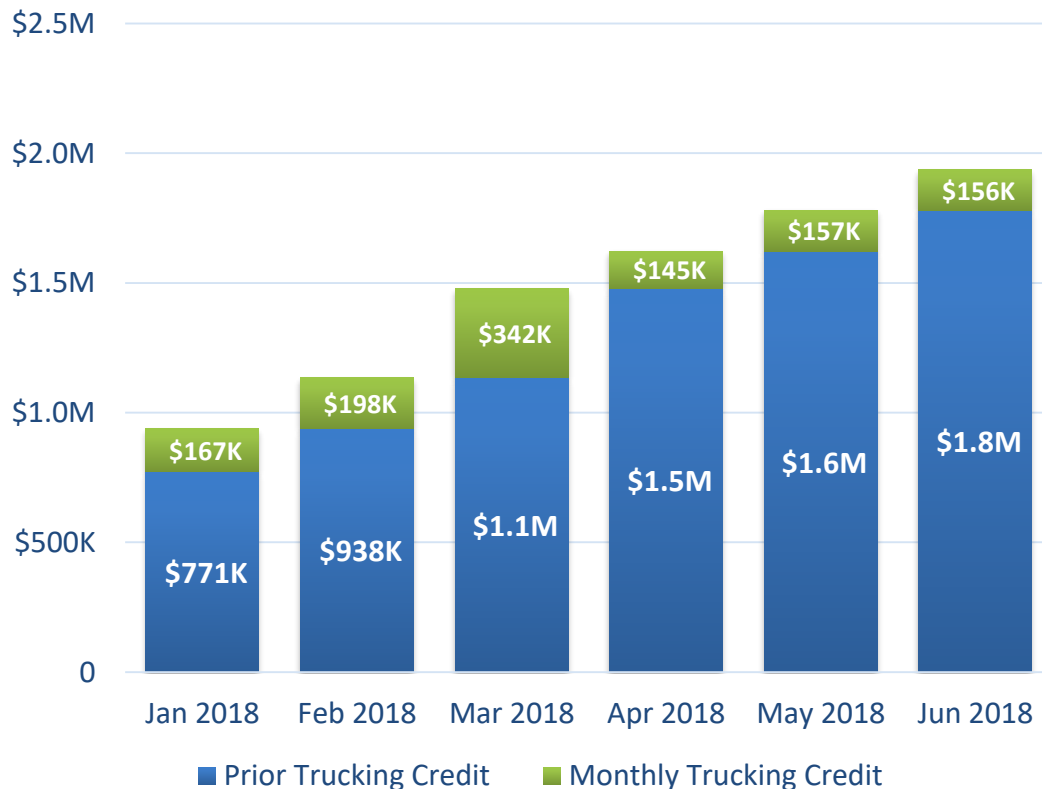
**Non-DBE Dollars for
DBE Credit Maximum**

\$500K

17.60%

**% Towards Maximum
Non-DBE Dollars for
DBE Credit**

NON-DBE FOR DBE CREDIT TO DATE



Questions & Answers



Ethnicity/Gender Payments to Subcontractors

Asian-Pacific American	Black American	Hispanic American	Native American	Subcontinent-Asian American	Non-Minority Women
\$16,361,135	\$7,596,814	\$16,015,758	\$12,090,857	\$2,770,134	\$22,268,706

