

DBE COMPLAINT PROCEDURES AND DBE COMPLAINT PROCESS DESCRIPTION FOR STAFF

- A. Within 10 business days of being informed by Shasta Regional Transportation Agency (SRTA) that it is not responsive because it has not provided sufficient U/DBE documentation, a bidder/offeror may request administrative reconsideration. For DBE-related complaints arising during the administration of a contract or outside of the procurement process, the complaint must be filed within 30 days of the date of the alleged SRTA discretionary action forming the basis of the complaint. Complainants should make this request in writing to the following reconsideration official or his/her designee using the attached complaint form:

Disadvantaged Business Enterprise Liaison Officer
SRTA
address

- B. The reconsideration official will not have played any role in the alleged discretionary action that is the basis for the complaint. The reconsideration official will review the administrative record concerning the reconsideration request (AR) and determine if it requires resolution by a committee or may be resolved by an appointed reconsideration person as the committee.
- C. As part of this reconsideration, the complainant will have the opportunity to provide written documentation or argument concerning the issues. The complainant may also have the opportunity to meet in person with the reconsideration committee or official to discuss the issues.
- D. The reconsideration committee and/or official will review the reconsideration request in a timely manner and may hold an informal hearing if deemed necessary in order to complete its investigation. The reconsideration committee or official will prepare a recommendation regarding the complainant's reconsideration request, in writing, to SRTA's Executive Director within 30 (thirty) calendar days of the date of receipt of the request. All materials included with the AR at time of submittal will be considered. The Executive Director will either sustain or reject the reconsideration document in writing based upon the recommendation of the administrative committee or official and the best interests of SRTA. This decision will be communicated in writing to the complainant.
- E. The result of the SRTA reconsideration process is not administratively appealable to the Department of Transportation, however, the complainant may contact one or more

of the following agencies that oversee various aspects of SRTA DBE Programs to file a complaint directly with those agencies:

Director, Office of Civil Rights
Federal Transit Administration
1200 New Jersey Ave, SE
Washington, DC 20590

Caltrans District Local Assistance:

(Insert appropriate district contact info above)

DBE Complaint Process Description for Staff

1. INTRODUCTION

These processes are intended to assist SRTA staff in managing DBE-related complaints arising out of or related to a contract between a consultant/contractor, SRTA and/or any DBE prime consultants/contractors/subcontractors/subconsultant. It is important to note that DBE dispute/complaint references provided herein are examples and are not intended to be inclusive of all issues that can arise from DBE requirements. These processes are intended to serve as the framework for receiving, tracking, and resolving complaints, thereby creating an efficient method for handling these issues.

These procedures are meant to provide details for staff. The types of DBE complaints intended to be covered by these procedures, include, but are not limited to:

- Disputes related to whether a proposer/bidder has provided sufficient DBE documentation
- Disputes related to project participation by DBEs
- Termination of DBE contractor/subcontractor
- Nonpayment of a DBE firm
- Failure to provide a DBE the work to which the prime committed

The complaint resolution process will focus on gathering pertinent information, determining the responsibilities of the affected parties and achieving a thorough understanding of the issue(s) in dispute. SRTA staff should be committed to providing a timely response and resolution and evaluating complaints in accordance with the terms of the contract documents and applicable laws.

A. Governing Regulations and Statutes

All complaint resolution actions will be governed by any or all of the following non-exhaustive list of applicable laws, regulations, and documents:

- 49 CFR Part 26
- State of California Department of Industrial Relations Prevailing Wage Determinations
- California Labor Code
- SRTA solicitation documents
- SRTA contract documents

2. RECEIVING A COMPLAINT

Complaints addressed in these processes will typically originate from a compliance related issue/discrepancy discovered by SRTA or its authorized representative, as part of the standard DBE compliance monitoring review.

A. Evaluating a Complaint

Any contractor/consultant/subcontractor/subconsultant that believes that it has been subjected to a violation under DBE-related laws, regulations or contractual requirements as a result of a SRTA discretionary action, may file a complaint with SRTA. A complaint is a written or electronic statement concerning an allegation of noncompliance that contains a request for SRTA to take some type of remedial action. Complaints must be in writing and may be filed by mail or fax, in person, or online. Immediately upon receipt, the SRTA **DBE Reconsideration Official** should determine whether the correspondence constitutes a DBE-related complaint.

The following are examples of items that should not be considered a complaint:

- (a) Anonymous correspondence;
- (b) Inquiries seeking advice or information;
- (c) Courtesy copies of correspondence or complaints filed with other agencies; and
- (d) Oral allegations (exceptions should be made for people with disabilities or who require translation assistance on request).

Correspondence that is not a complaint but nevertheless potentially involves a DBE-related compliance deficiency should be recorded by SRTA staff as an inquiry if staff believes an issue might eventually evolve into a complaint.

B. Record and Track Complaint

A complaint (or potential complaint) should be date stamped by the receiving office immediately upon receipt. This step is important because the date that SRTA receives the complaint may affect a complainant's ability to seek redress. Once correspondence has been deemed a complaint, SRTA staff should document the appropriate information and assign a case or tracking number, and create an investigative case file to hold all documents and information pertaining to the complaint.

When recording a complaint, the following guidelines should be applied:

- (a) Each complaint should be assigned a separate number;
- (b) Complaints filed by more than one person that raise substantially identical allegations against the same recipient may be treated as one complaint and assigned one case number;
- (c) Complaints filed by more than one person against the same entity should be assigned separate case numbers if they contain different allegations;
- (d) New allegations filed by the same complainant against the same entity after the investigative process has begun should be reviewed on a case-by-case basis to determine whether the allegations should be added to the existing complaint or treated as a new complaint; and
- (e) Complaints filed by entities, such as advocacy groups, where there are multiple complainants, but one entity handling all complaints should receive one case number.

C. Initial Considerations After Receipt of Complaint

Once SRTA concludes that correspondence is a complaint staff should determine whether the complaint is "complete" in order to proceed with complaint processing and resolution. For a complaint to be complete it should include the following information if applicable:

- (a) A written explanation of the violation(s) of DBE-related laws, regulations or contractual requirements complainant believes has occurred and that involve SRTA
- (b) Information necessary to contact the complainant (if the complaint is filed by e-mail, SRTA should request the sender's actual name and address, if not provided)
- (c) Identification of the person(s) or group(s) injured by the alleged violation
- (d) Identification of the person(s) or organization(s) alleged to have committed the violation
- (e) Sufficient information to understand the facts that led the complainant to a violation of DBE-related laws, regulations or contractual requirements occurred and when the violation took place

SRTA may contact the complainant by telephone or e-mail to obtain missing information. In instances in which further information is needed in writing, especially when the complainant cannot be reached by telephone, staff may wish to send the individual a complaint form. However, staff should always advise the complainant that he or she is *not required* to use the complaint form to submit the complaint or additional information, but rather may choose to provide the information it asks for in some other format.

Regardless of the method of contact or at what stage in the investigation information is requested, the complainant should be informed that SRTA will close the case if the information is not provided within 30 days. SRTA may extend the deadline depending on the extent of the information request or other special circumstances. The complainant should be notified in writing of closure of the investigation.

If the complaint contains sufficient information for at least one allegation, but lacks sufficient information for other allegations, staff should attempt to obtain the missing information, as described above. Complainant should be notified in writing that allegations lacking sufficient information that is not supplied within the 30-day timeframe will be closed;

Staff should work with each complainant to ensure receipt of sufficient information to evaluate the complaint. People with disabilities and limited English proficiency, in particular, may need assistance preparing complaint materials.

If the complaint is submitted on behalf of a complainant by an attorney, SRTA staff should call the attorney for additional information or to request permission to contact the complainant directly. In addition, if it appears the complainant may be represented by an attorney (especially if the complaint states that the matter raised has been or will be filed in court), staff should ask the complainant whether he or she is represented by an attorney concerning the complaint. If so, staff should contact the attorney for permission before further contacting the complainant directly.

D. Determining Whether the Complaint is Timely

SRTA DBE Complaint Procedures state that complaints that arise due to a proposer/bidder being found non-responsive due to failure to provide sufficient U/DBE documentation must be filed within 10 business days, and other types of DBE-related complaints must be filed within 30 days of the last date of the alleged discrimination. The filing date of the complaint is the earlier of: (1) the postmark of the complaint or (2) the date the complaint is received by SRTA's main office.

If a complaint is not filed within these timeframes, SRTA staff the SRTA Executive Director may grant an extension under any of the following circumstances:

- (a) The complainant could not reasonably be expected to know the act was a violation within the 30-day period, and the complaint was filed within 30 days after the complainant became aware of the alleged violation;
- (b) The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 30-day period, and the complaint was filed within 30 days after the period of incapacitation ended;
- (c) The complainant filed a complaint alleging the same discriminatory conduct within the 30-day period with another Federal, state, or local civil rights enforcement agency, and filed a complaint with SRTA within 30 days after the other agency had completed its investigation or notified the complainant that it would take no further action;
- (e) The violation is of a continuing nature.

E. Closing an Investigation

The SRTA reconsideration official/committee may decide to send a letter to the complainant informing him/her/it that SRTA will not proceed further with investigation or reconsideration, if one or more of the following conditions exist:

- (a) The complaint is untimely filed;
- (b) The complaint is so weak, insubstantial, or lacking in detail that it is without merit, or so replete with incoherent or unreadable statements that it, as a whole, cannot be considered to be grounded in fact;
- (c) The complainant fails to respond to repeated requests for additional information needed to process the complaint;
- (d) The complainant cannot be located after reasonable attempts;
- (e) There is no statutory or alleged basis for the complaint, or the complainant does not allege any harm with regard to current programs or statutes;
- (f) The complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same recipient or other recipients that have been found factually or legally insubstantial;

- (k) The same allegations and issues of the complaint have been addressed in a recently resolved complaint or compliance review;
- (l) The complainant decides to withdraw his or her complaint. If the complaint included class allegations, the office may close out the entire complaint, pursue resolution of the class allegations, or use the information to target future compliance review activity;
- (m) Litigation has been filed raising the same allegations with the same basis(es) and issue(s) involved in the complaint;
- (n) The death of the complainant or injured party makes it impossible to investigate the allegations fully, or when the death of the complainant or injured party forecloses the possibility of relief because the complaint involved potential relief solely for the complainant or injured party;

3. INVESTIGATION OF COMPLAINT

Upon receiving the complaint statement, and after acknowledging receipt of complaint statement, SRTA staff should review the complaint statement and all supporting documentation provided.

The investigation should be confined to the issues and facts relevant to the allegations in the complaint, unless evidence shows the need to extend the issues

The investigation will take the following steps (at a minimum) to arrive at a prompt resolution. The specific steps include:

- Identify the appropriate contacts and names of all persons affected by the dispute.
- Identify and review all relevant documents, practices and procedures to determine appropriate resolution, including but not limited to relevant DBE regulations, DBE program documents, solicitation, contract, etc.
- If the complaint involves a discrepancy in payment, look for supporting documentation provided by the Contractor/Subcontractor, such as invoices that conflict with SRTA records.

After deciding to proceed with investigation of the complaint, staff should notify the complainant and other parties alleged to have violated a DBE requirement that the complaint has been accepted for investigation. The notification letter to should contain the following:

- (a) SRTA understanding of the basis for the complaint;
- (b) Brief statement of the allegations;
- (c) Indication of when the parties will be contacted by SRTA;
- (e) Cautionary statement that recipients or other persons shall not intimidate, threaten, coerce, or discriminate against the complainant because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation proceeding or hearing under Title VI or any other laws or regulations related to nondiscrimination;

- (f) SRTA contact information.

If during the course of the investigation/analysis, the complainant or another involved party wishes to submit additional information concerning the dispute, SRTA staff should accept such information, so long as it is pertinent to resolving the pending issue

4. DOCUMENTATION GUIDELINES

The following guidelines should be followed for keeping records and providing information when responding to Contractor/Subcontractor disputes, questions, and all other potential claims:

- Make sure that reports and documents (such as those submitted to SRTA counsel and the USDOT) are factual and accurate.
- The communication between SRTA and Contractor/Subcontractor concerning issue in dispute should be in writing.
- Record the full name and contact information of all Contractor/Subcontractor personnel (who work for the company raising the challenge).

5. RESPONSE

After the reconsideration official/committee comes to a decision, the recommendation(s) should be put in writing and provided to the Executive Director. The Executive Director should document whether she/he sustains or rejects the recommendation(s). The SRTA response to the complainant should include the following information:

- Information considered during the SRTA investigation
- Other parties with whom SRTA consulted
- Supporting documentation (USDOT or Caltrans decisions, regulations, laws, etc.)
- Final decision and recommendations for subsequent action by involved parties