How Compliance Fits in a Gold Star DBE program?

Independent Monitoring Services of DBE Fraud Settlement Agreements

October 28, 2015
Agenda

• Introduction of DBE Monitoring Team

• DBE Fraud Settlement Agreements
  - Agreement Requirements

• Independent Monitoring Services
  - Agreement Compliance & Monitoring Approach
Company Profile

• Founded in 1999 (New York State - Rochester)

• Minority Owned Business Enterprise (MBE) - NYS
  Disadvantaged Business Enterprise (DBE) (Various States)

• Extensive public and private sector market experience

• Specialize in construction industry:
  - M/W/D/SBE & EEO Contract Compliance
  - M/W/D/SBE Policy & Program Development
  - Community Outreach & Public Involvement
  - Safety Monitoring & OSHA Outreach Training
  - Construction Management Support Services

• Over 17 years of Experience
PROJECT TEAM

Landon and Rian Enterprises, Inc. has designated the following project team members to administer the Independent DBE Monitoring Service plans.

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PURPOSE

Execute Independent Monitoring Services (IMS) monitor and report on the adoption and implementation of the General Contractor’s Corporate Compliance Program for a period of two (2) years. Services provided are based on compliance with the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Regulation at 49 C.F.R. Part 26 and (State) Department of Transportation DBE requirements.

The IMS will ensure compliance monitoring activities are implemented and provide reliable evidence on a quarterly basis that the Corporate Compliance Program action items are being adopted and implemented by General Contractor per the agreed upon Administrative Settlement and Compliance Agreement (FHWA-XXXX-XXXX).
OBJECTIVES

The objectives of the plan will at a minimum represent the guidelines under the terms of the Administrative Settlement and Compliance Agreement (FHWA-XXX-XXXX) between the Federal Highway Administration (FHWA) and ABC Construction Corporation.

• Monitor ABC Construction Corporation’s overall implementation of the Federal Highway Administration approved Code of Ethics and Corporate Compliance Program on all Federally-funded transportation construction projects administered out of ABC Corps. State District Office for a period of (2) two years.

• Routinely visit (monthly/as needed) ABC’s construction projects in the State involving the use of Federal funds. Review available DBE compliance records on the project site and physically view that contracted DBE subcontractors are performing scope of work contracted to provide.

• Submittal of periodic reports directly to the FHWA regarding ABC’s adoption and implementation of the FHWA approved Code of Ethics and Corporate Compliance Program in the FHWA-XXX-XXXX settlement agreement.
• The periodic report will address the following scope of issues and address each of the following issues required by the Administrative Settlement and Compliance Agreement (FHWA-XXX-XXXX):

  a.) Overall effectiveness of ABC's implementation of the Code of Ethics and Corporate Compliance Program.

  b.) Development of a documentation review checklist(s) and schedule. The checklist(s) will verify the following on ABC’s federally funded transportation construction projects in the State where issued:

  1.) **Bidding Phase Checklist:**
      - DBE Pre-bid Checklist
      - DBE Bid Solicitation Log
      - DBE Certification Verification
      - Good Faith Effort Documents (pre-bid quotes, pre-bid written & emailed communications, voice messages, etc.)
      - DOT - Bid Documents (DBE Goal Sheet & Committal Sheet)

  2.) **Construction Phase Checklist:**
      - DBE Commercially Useful Function (CUF)
      - DBE Monthly Progress Report - Proof of Payment - Compliance with SCDOT
      - DBE Contract Specifications
3.) **Quarterly Report Check - Accurate reporting of DBE work on the projects**
   a.) DBE Quarterly Report Form
   b.) DBE Trucker’s Reports
   c.) Review ABCS's DBE Corporate Compliance Program and verify that they are taking all actions and processes required by the USDOT DBE Regulation at 49 C.F.R. Part 26 & DOT.
   d.) Review Good Faith Efforts and factors on whether or not ABC made adequate and acceptable good faith efforts to meet the DOT DBE contract goal. *(Note: Part of bidding phase document review)*

4.) **L & R’s quarterly report at a minimum will include the following:**
   1.) Status of ABC’s adherence to the DOT’s DBE action and plan requirements, that incorporate the requirements of the USDOT Regulation at 49 C.F.R. Part 26;
   2.) A summary of the documents and activities reviewed in ABC’s main & project offices as well as individual project offices;
   3.) All failures or discoveries on each ABC Construction projects that did not meet the appropriate DBE requirements;
5.) **Questions asked during the Compliance Monitoring Process**

a.) Has ABC Construction's Corporate Compliance Officials conducted appropriate investigations of each complaint and/or information received concerning DBE implementation efforts?

b.) Has ABC Construction's Corporate Compliance Officials conducted appropriate investigations of complaints and/or information alleging any violation or lack of compliance with this Agreement?

c.) Have ABC Construction's Compliance Officials maintained a Compliance Log of the reported information, complaints, and investigations?

d.) Have ABC Construction's Compliance Officials maintained the required dedicated private hotline for reporting suspected instances of improper conduct to the Compliance Officials?
Document Review

Code of Ethics

Review ABC’s Code of Ethics documents, as approved in the FHWA-XXX-XXXX, related to the state offices on a monthly basis. The following documents will be requested from ABC to be reviewed to ensure the guidelines are being implemented:

- Phone Log & Assigned Case Numbers - (Ethic’s Hotline)
- Compliance Log Reports and Complaints (Tracking Receipt, Complaints, Investigation and Resolutions)
- List of Employee Training Programs Offered (ABC Ethics University)
- Copies of New Employee Acknowledgement(s)
**Construction Phase Documents**

Conduct on-site verification reviews of both ABC Construction (if on-site office presence is necessary) and DBE subcontractors during the construction phase of all Federally-funded highway projects located in the State. If an office (trailer) presence is needed by ABC Construction, the following items will be reviewed onsite, if not; the review will take place at ABC’s Project Manager’s main office.

- ABC Ethics Hotline Poster (Code of Ethics - Awareness materials)
- ABC Ethics & Compliance Project Field Manual (Code of Ethics Manual)
- ABC Ethics Hotline Pocket Carry Cards (ABC Employees Only)

Work with ABC Construction’s Project Managers to provide a schedule of work for each DBE firm on each contract so we can formulate a (1) one month look ahead schedule to conduct the onsite verification reviews.

Project Managers will receive an “Onsite Notice” request with a proposed date for the review, along with any requested documents, typically (1) week in advance if possible. The “Onsite Notice” will also state the name of the DBE subcontractor(s) we are requiring to speak with onsite, so adequate time can be scheduled to conduct our onsite review.
On-site reviews will include the following items for review and completion:

DBE Subcontractor Commercially Useful Function (Trucking, Material & Supplies, Trade Contractor)
- Monthly DBE Payment Invoices & Certified Payrolls
- Truck Tickets
- DOT LPA & Construction DBE Quarterly Report Submittals
- DOT DBE Trucker’s Report Submittals
- DBE Status Spreadsheets
- Written certification that a field review of DBE records and monitoring of worksites occurred to ensure work committed to a DBE at contract award is actually being performed by the DBE.

- Review daily inspection reports the name of the DBE and the associated contract item and cross check the inspection report against the DBE commitment form to ensure no improper substitutions have occurred.

- Interview the DBE subcontractor workers and confirm with ABC project manager that certified payroll records have been received for the DBE, if applicable.

- If the DBE firm is a materials supplier, review any available documents such as delivery confirmation reports or weight tickets to confirm the DBE supplied the materials. If delivery documents are not available, obtain payment information such as canceled checks and invoices from ABC to confirm the DBE performed the supply function.
Back-up documents are stored on a cloud site and will be uploaded to a FTP site by ABC Construction on a monthly basis. Review appropriate available documents prior to any project site-visit.

*The following list of documents will be uploaded as back-up documentation:*

**Good Faith Effort** (Uploaded Monthly) - 15th day following the end of the previous month.

**Agreements/Contracts** (Uploaded Monthly) - 15th day following the end of the previous month.

**Invoices** (Uploaded Monthly) - 15th day following the end of the previous month.

**Payment Verification** (Uploaded Monthly) - 15th day following the end of the previous month.

**DOT LPA & Construction DBE Quarterly Report Submittals** (Uploaded Quarterly) - 15th day following the end of the previous quarter.

**DOT DBE Trucker’s Report Submittals** (Uploaded Quarterly) - 15th day following the end of the previous quarter.