Commercially Useful Function
and
The Road to a Gold Star Compliance Program

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Top Compliance Challenges

The USDOT OIG has identified DBE fraud as one of their top priorities.
Top Compliance Challenges

Increased oversight of the DBE Program to reduce fraud and ensure the DBE Program benefits bona fide disadvantaged businesses.
Top Compliance Challenges

ODOT, as the contracting agency, is responsible to ensure that the prime contractor is monitoring the DBE performing a CUF (commercially useful function).
Commercially Useful Function

- DBE participation towards the established project goal is counted only if the DBE is performing a “Commercially Useful Function”.
- The DBE must carry out its contract responsibilities by actually performing, managing, and supervising the work they have been hired to perform.
What are the first steps on our road to excellence?

ODOT is working toward a compliance program that will exemplify excellence in government.
What are the first steps on our road to excellence?

- Continuity in each District by having the Contractor Compliance Officer report to one manager in Central Office.
What are the first steps on our road to excellence?

Comprehensive CUF training for all District Contractor Compliance Officer’s.
What are the first steps on our road to excellence?

Spring 2016, in partnership with FHWA, training for all District Construction personnel by traveling to each District to highlight project monitoring.
What are the first steps on our road to excellence?

- Training on CUF “Red Flags”.
- Develop a process for field personnel to report CUF red flags to the Contractor Compliance Officers for further investigation.
What are the first steps on our road to excellence?

ODI reports findings to FHWA.
The Importance of a Project Level Monitoring Program
The Importance of a Project Level Monitoring Program

- Construction field personnel are on the project each day with the contractors.
- The field personnel will be first to identify if the DBE is working on the project.
- The field personnel get to know the contractor’s employees.
- The field personnel keep a daily report on project activities.
Red Flags Areas

- Management
- Equipment
- Workforce
- Materials
- Performance
Red Flag Examples

- DBE Employees are supervised by another contractor.
- If DBE is using equipment that is owned by the prime contractor or another subcontractor and they are not leasing the equipment.
- Equipment has magnetic signs covering another owners identity.
Red Flag Examples

- The DBE does not have a regular workforce.
- The DBE did not negotiate the cost of materials in their subcontract agreement.
- Materials were purchased from the prime contractor or an affiliate of the prime contractor.
Sanctions

- Immediate suspension of work.
- Withholding of project payments from the prime.
- Investigation by the U.S. DOT Office of the Inspector General and/or the U.S. Attorney.
- Revoke DBE certification and/or pre-qualification.
- Pursue debarment of the DBE firm, prime contractor and/or subcontractor.