Compliance & Enforcement
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Learning Objectives

- Significance of DBE fraud from the perspective of the Federal Highway Administration (FHWA)
- Roles and expectations of local, state, and federal governments in the prevention of DBE fraud
- Monitoring Commercially Useful Function (CUF) and measures for prevention
- Possible sanctions
- Impacts/Costs of DBE fraud to the DBE Program
A DBE is a small, woman or minority owned business controlled by a socially and economically disadvantaged individual.

10% National goal

A mandatory US DOT program designed to:

1) remedy the effects of past discrimination,
2) level the contracting playing field, and
3) remove barriers to growth and competition.
What is DBE fraud?

- wrongful or criminal deception intended to result in financial or personal gain

- a person or thing intended to deceive others, typically by unjustifiably claiming or being credited with accomplishments or qualities

- A pattern, rather than a single incident
Monitor DBEs for Commercially Useful Function (49 CFR 26.55)

Report concerns, red flags or instances of noncompliance to FHWA or OIG (49 CFR 26.101)
Both the prime contractor and the State Transportation Agency (STA) receive credit toward the DBE goal (contract and overall) only when a DBE working on a contract performs a CUF.
“A DBE performs a commercially useful function when it is responsible for:
- execution of the work of the contract, and
- is carrying out its responsibilities by actually performing, managing, and supervising the work involved

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation...”
Commercially Useful Function

**Elements of the Program**

- Management
- Equipment
- Workforce
- Materials
- Performance
FHWA advises that the STA should establish and enforce monitoring procedures that include the following:

- **Clearly written directives** defining the role and interrelationship of the STA’s various departmental staff responsible to monitor and evaluate the contractor’s compliance with the DBE contract provisions;

- **Procedures** that spell out specific monitoring activities and responsibilities of a project level monitoring program;

- **Exchange of information** between departmental, central and field offices in reporting accomplishments, violations and enforcement; and

- **Procedures for the application of appropriate sanctions** once a determination of failure to meet the DBE contract requirements is made.
Possible Sanctions

LOWER LEVEL

• 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.

HIGHER LEVEL

• You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.
STA & LPA Oversight:

- It is the primary responsibility of the prime contractor to ensure that the DBE is performing a CUF.

- The STA, as the contracting agency, has oversight responsibility to ensure that the prime contractor has effectively met this responsibility under its contract with the STA.

- The STA needs to have sufficient field personnel and general headquarters staff to monitor the performance of work performed by DBEs on all federal aid projects, including those of sub-recipients.
FHWA Multi-Pronged Approach

- Civil Rights Program Manager
- Division Engineers Red Flags
- Joint reviews with ODOT
- Training
What are the Costs of DBE Fraud?

• Perceived decrease in the integrity of the program
• Decrease in community support for the program
• Increase in challenges to the program
• Increased scrutiny on stewardship of the program
• Possible decrease in trust between the contracting community and public agencies

• Fewer legitimate DBE businesses utilized on Federal-aid highway projects
• Inability to reach the goals of the DBE Program
Thank you! Questions?

THE END