A Brief Look at Florida’s Program and How Florida, New York and Ohio are Working to Shape the Program’s Future
Florida’s DBE Program is 100% Race and Gender Neutral

- 49 CFR 26.51 requires race-neutrality to the maximum extent feasible
- Race Neutral means that Florida does not set DBE Goals on contracts
- Florida had somewhat flimsy grounds for becoming race neutral
- 26.51(f)(3) requires Florida’s program to remain race neutral
Florida’s 3-year DBE Goal is Increasing with Participation

<table>
<thead>
<tr>
<th>Fed Fiscal Year</th>
<th>GOAL</th>
<th>ACHIEVEMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>8.12</td>
<td>8.16</td>
</tr>
<tr>
<td>2010</td>
<td>8.18</td>
<td>8.33</td>
</tr>
<tr>
<td>2011</td>
<td>8.18</td>
<td>8.50</td>
</tr>
<tr>
<td>2012</td>
<td>8.60</td>
<td>10.31</td>
</tr>
<tr>
<td>2013</td>
<td>8.60</td>
<td>11.78</td>
</tr>
<tr>
<td>2014</td>
<td>8.60</td>
<td>10.56</td>
</tr>
<tr>
<td>2015</td>
<td>9.91</td>
<td>11.37</td>
</tr>
<tr>
<td>2016</td>
<td>9.91</td>
<td>12.47</td>
</tr>
</tbody>
</table>

- Since 2011, Florida has met or exceeded the goal all but twice.
- Beginning FY 2013, Florida began using an automated system for entering/tracking DBE credit.
FDOT monitoring and oversight of the DBE program is critically important.

Compliance expectations are provided in Chapter 2 of the FDOT Contractor Compliance Manual.

FDOT District Contract Compliance Managers provide training and technical assistance to contractors and DBEs on following the manual.

FDOT does not hesitate to withhold contractor (and LPA) payments for compliance issues.
Race Neutral Programs Take Commitment

• In addition to staff liaisons for Primes and DBEs, FDOT operates both FHWA and State funded Supportive Services (http://www.dot.state.fl.us/equalopportunityoffice/serviceproviders.shtm).
  o Multi-tiered services
    ▶ Matching DBEs with major project needs
    ▶ Bonding and Financial Assistance
    ▶ Construction and Back Office Management
  o Services open to DBEs and all small businesses
  o Specific services for Primes to improve use of DBEs
• FDOT leadership is held accountable for DBE program support and compliance and FDOT Secretary is briefed monthly on performance
Current Challenges in Florida’s Program

- Overachievement in the past few years
- Ensuring accurate and universal use of the automated system for tracking and reporting
- Policing race neutrality
- CUF and counting on Major Projects

That’s where these folks come in!
Concerns about Compliance on Major Projects

- Prompted a Peer Exchange with New York beginning in 2013 to look at specific projects.
- Goal was to share critical information on compliance issues unique to major projects.
- Ohio Division joined in 2016.
- This will be the first time we’ve shared lessons learned with a national audience.

April 2013 – HCR and NY Division tour I-595, an FDOT P3 with a cost of about $1 Billion.
Lessons Learned

I. Contract Language (RFP)
II. Project Organizational Structure
III. Oversight Compliance Processes
IV. DBE Supportive Services
Projects Overview

The New NY Bridge
Kosciuszko Bridge
Goethals Bridge
I-4 Ultimate

4 Major Projects Examined
The New NY Bridge project is creating a state-of-the-art, twin-span replacement for the 3.1-mile Tappan Zee Bridge across the Hudson River.

- **Contractor:** Tappan Zee Constructors
- **Owner:** NYS Thru-way Authority
- **Cost:** $3.98 Billion
- **Contract Type:** Design Build
- **DBE Goal:** 10% ($314M)
- **TIFIA Loan:** 1.6B
- **Fast track Project – Permitted in 11 months**
Kosciuszko Bridge

The 1.1 mile eastbound viaduct is being completely replaced, with the new span being built alongside the current bridge. The portion over water will be a cable-stayed design. The new bridge will improve safety and reduce congestion through wider driving lanes, the addition of auxiliary lanes and shoulders, and a reduced grade which will make it easier for trucks to stay up to speed.
The project will replace the existing Goethals Bridge which spans the Arthur Kill River on I-278 connecting Elizabeth, New Jersey and Staten Island, New York. The existing bridge, built in the 1920s, will be replaced with dual bridges and the original bridge demolished. It is anticipated that the two new spans will carry approximately 14 million vehicles annually.

- Contractor: Kiewitt-Weeks-Massman, AJV
- Owner: Port Authority of NY and NJ
- Cost: $1.5 Billion
- Contract Type: P3 – Design-Build-Maintain
- DBE Goal: 10% (93.7M)
- TIFIA Loan: $500M
- Developer to Maintain for 35 years
The Ultimate Upgrade

Reconstruct 21 miles of the Interstate 4 corridor including installation of 2 new express lanes (in each direction), replacement of 75 bridges, and complete reconstruction of 15 interchanges.

Contractor: Skanska-Granite-Lane - JV
- Owner: Florida DOT
- Cost: $2.3 Billion
- Contract Type: P3 – Design-Build-Maintain
- DBE Goal: 9% (276M)
- SBE Goal: 3% (92M)
- TIFIA Loan: $954M
- Developer to Maintain for 40 years
Lesson One: Contract Language (RFP)
Compliance Specific Requirements

- DBE plan required at time of award
- DBE goal broken up over multiple areas
- Prevailing wage rates – monitored daily by State DOL
- Establishes an audit plan for oversight of the Compliance Program
- Non-conformance point system
- Required amount of knowledge and experience for the compliance manager
- Compliance requirements referenced at the CFR level
Establish a contractual requirement for a Project Management Plan (PMP) that addresses the Contractor’s QA/QC processes.

Ask for DBE Plan at the time of Award.

Don’t miss the opportunity to set DBE goals across operations & maintain phases – maintain includes resurfacing and other activities that FHWA would participate in.

Qualifications clearly defined in the contract documents for the staff of the oversight within the D/B concessionaire team.
• Identify “Compliance Personnel” as key personnel.
• Insulate QA from the contractor who is paying for it.
• Consider specification requirements for electronic system (DBE counting, Payrolls, etc) and specify Owner as an additional owner of the documentation.
• Require a list of all subcontractors and suppliers to be maintained and supplied to Owner.
LESSON TWO: Project Organizational Structure
# Project Organizational Structure – Project Comparisons

<table>
<thead>
<tr>
<th>Project</th>
<th>Tappan Z</th>
<th>Goethels</th>
<th>K Bridge</th>
<th>I-4 Ultimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
<td>NY</td>
<td>NY/NJ</td>
<td>NY</td>
<td>FL</td>
</tr>
<tr>
<td>Federal Funding</td>
<td>TIFIA</td>
<td>TIFIA</td>
<td></td>
<td>TIFIA</td>
</tr>
<tr>
<td>Contract Type</td>
<td>Design Build</td>
<td>P3</td>
<td>Design Build</td>
<td>P3</td>
</tr>
<tr>
<td>Contract Amount</td>
<td>$3.98 Billion</td>
<td>$1.5 Billion</td>
<td>$555 Million</td>
<td>$2.3 Billion</td>
</tr>
</tbody>
</table>

## Contractual Lines of Authority

<table>
<thead>
<tr>
<th>Owner</th>
<th>NYS Thruway Authority*</th>
<th>NY Port Authority</th>
<th>NYDOT</th>
<th>FDOT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner's Engineer (OE)</td>
<td>HNTB*</td>
<td>HNTB (Technical Oversight)</td>
<td>STE*</td>
<td>HNTB (Construction)*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>AECOM (Program Mgmt)*</td>
<td></td>
<td>RS&amp;H (Design)</td>
</tr>
<tr>
<td>Developer/Concessionnaire</td>
<td>NYNJ Link Partnership</td>
<td></td>
<td></td>
<td>I4 Mobility Partners (I4MP)</td>
</tr>
<tr>
<td>Design/Build Team:</td>
<td>Tappan Z Constructors (TZC)</td>
<td>Kiewet-Weeks-Massman JV</td>
<td>Skanska/Kiewit/ECCO III (SKE)</td>
<td>Skanska-Granite-Lane (SGL)</td>
</tr>
<tr>
<td>- Lead Contractor</td>
<td></td>
<td></td>
<td></td>
<td>HDR/Jacobs JV</td>
</tr>
<tr>
<td>- Designer</td>
<td></td>
<td></td>
<td></td>
<td>HDR/Jacobs JV</td>
</tr>
<tr>
<td>O&amp;M</td>
<td>Macquarie Infrastructure and Real Assets</td>
<td></td>
<td></td>
<td>ICA</td>
</tr>
<tr>
<td>Quality Assurance Firm (QAF)</td>
<td>KS Engineers</td>
<td></td>
<td></td>
<td>LIRG*</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Volkert*</td>
</tr>
</tbody>
</table>

*Responsible for Civil Rights Oversight component
Risk Transfer:

- **Issue** - Owner’s expectations for transfer of risk was not as successful in the area of Civil Rights resulting in budget overruns for Owner due to additional staffing efforts.
Project Organizational Structure – Lessons Learned

Roles and Responsibilities:

- **Issue** – Quality Assurance Firm does not fulfill audit role and is resistant to report Contractor issues identified.

- **Issue** – Concessionaire/Developer does not take ownership for resolution of issues between QAF and Contractor but rather serves in a passive role passing the issues onto the Contractor for resolution.
Contract Language:
- Key Personnel position for a Civil Rights expert with certain experience requirements that requires Owner approval for both Contractor and Quality Assurance Firm
- Insulation (firewall) for Quality Assurance Firm requiring Owner approval before personnel changes occur
- Clear definition of Concessionaire/Developer roles and responsibilities for resolution of issues
LESSON THREE
Oversight Compliance Processes
Oversight of Project Data and Information

Massive amount of data on major projects to monitor:

- Prompt Payment
- Trucking
- EEO
- Commitments vs. Attainments
- Commitment to the Goal
- Tiering of subcontracting
- Certified payrolls (not just for Davis Bacon, but for DBE monitoring)
- Correspondence
Electronic/Web-based Systems

- Crucial to manage volume of data though not required
- Data systems should be prescribed in the RFP
  - By name
  - By system requirements
- Ownership of systems should be the project sponsor
- Systems should be able to analyze data and create reports
- All partners should have access to the systems at appropriate security levels to assure data is protected
- Limitations of electronic systems does not relieve sponsor or D/B of compliance
Lessons Learned of Web-based Systems

Whether for DBE, Davis Bacon or other functions, there are systems available:

• Every system has strengths and weaknesses
• Get a demo!
• Talk to current users
• FHWA does not promote one system over another
• Here are 3 areas where electronic systems can make a difference:
Prompt Payment

<table>
<thead>
<tr>
<th>Date Paid</th>
<th>Aged</th>
<th>Paid To</th>
<th>Amount</th>
<th>Retained</th>
<th>Disbursed</th>
</tr>
</thead>
<tbody>
<tr>
<td>07/31/2005</td>
<td></td>
<td></td>
<td>$23,386.66</td>
<td>$0.00</td>
<td>($23,386.66)</td>
</tr>
<tr>
<td>07/31/2005</td>
<td></td>
<td></td>
<td>$23,386.66</td>
<td>$0.00</td>
<td>$23,386.66</td>
</tr>
<tr>
<td>02/16/2015</td>
<td></td>
<td></td>
<td>$1,250.00</td>
<td>$0.00</td>
<td>$1,250.00</td>
</tr>
<tr>
<td>04/04/2015</td>
<td></td>
<td></td>
<td>$700.00</td>
<td>$0.00</td>
<td>$700.00</td>
</tr>
<tr>
<td>04/10/2015</td>
<td></td>
<td>NYS DOT</td>
<td>$200,058.10</td>
<td>$0.00</td>
<td>$200,058.10</td>
</tr>
<tr>
<td>04/25/2015</td>
<td></td>
<td>NYS DOT</td>
<td>$429,619.20</td>
<td>$0.00</td>
<td>$429,619.20</td>
</tr>
<tr>
<td>05/09/2015</td>
<td></td>
<td>NYS DOT</td>
<td>$403,429.64</td>
<td>$0.00</td>
<td>$403,429.64</td>
</tr>
<tr>
<td>05/19/2015</td>
<td>10</td>
<td>NYS DOT</td>
<td>$9,297.87</td>
<td>$0.00</td>
<td>$9,297.87</td>
</tr>
<tr>
<td>05/28/2015</td>
<td></td>
<td>NYS DOT</td>
<td>$361,850.10</td>
<td>$0.00</td>
<td>$361,850.10</td>
</tr>
<tr>
<td>06/05/2015</td>
<td>8</td>
<td>NYS DOT</td>
<td>$4,565.63</td>
<td>$0.00</td>
<td>$4,565.63</td>
</tr>
<tr>
<td>06/10/2015</td>
<td>13</td>
<td></td>
<td>$4,348.12</td>
<td>$0.00</td>
<td>$4,348.12</td>
</tr>
</tbody>
</table>

Very easy to determine late payments (and compliant with regulation)!
Over 250 trucks on this project to monitor! Scanning is efficient use of time and gives accurate data.

## Truck "Route Time" Report

<table>
<thead>
<tr>
<th>Ticket Number</th>
<th>Site</th>
<th>Material</th>
<th>Truck #</th>
<th>Date</th>
<th>Time</th>
<th>Elapsed Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>SGL-0042658-16</td>
<td>D</td>
<td>HOURLY</td>
<td>OnOff 407</td>
<td>4/12/2016</td>
<td>7:47:48 AM</td>
<td></td>
</tr>
<tr>
<td>SGL-0042658-16</td>
<td>D</td>
<td>HOURLY</td>
<td>OnOff 407</td>
<td>4/12/2016</td>
<td>4:15:00 PM</td>
<td></td>
</tr>
<tr>
<td>SGL-0042659-16</td>
<td>D</td>
<td>HOURLY</td>
<td>OnOff 407</td>
<td>4/15/2016</td>
<td>8:00:00 AM</td>
<td></td>
</tr>
<tr>
<td>SGL-0042659-16</td>
<td>D</td>
<td>HOURLY</td>
<td>OnOff 407</td>
<td>4/15/2016</td>
<td>2:01:59 PM</td>
<td></td>
</tr>
<tr>
<td>SGL-0042660-16</td>
<td>D</td>
<td>HOURLY</td>
<td>OnOff 600</td>
<td>4/15/2016</td>
<td>7:30:00 AM</td>
<td></td>
</tr>
<tr>
<td>SGL-0042660-16</td>
<td>D</td>
<td>HOURLY</td>
<td>OnOff 600</td>
<td>4/15/2016</td>
<td>1:57:25 PM</td>
<td></td>
</tr>
<tr>
<td>SGL-0042661-16</td>
<td>D</td>
<td>HOURLY</td>
<td>OnOff 593</td>
<td>4/15/2016</td>
<td>7:48:21 AM</td>
<td></td>
</tr>
<tr>
<td>SGL-0042661-16</td>
<td>D</td>
<td>HOURLY</td>
<td>OnOff 593</td>
<td>4/15/2016</td>
<td>1:56:11 PM</td>
<td></td>
</tr>
</tbody>
</table>
### DBE Commitments and Attainments

**NEW NY BRIDGE**

<table>
<thead>
<tr>
<th>Contract</th>
<th>Goal %</th>
<th>Type</th>
<th>GFE %</th>
<th>GFE</th>
<th>Contract $</th>
<th>Goal $</th>
<th>Commitments</th>
<th>Attainment</th>
<th>% Attained</th>
<th>Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>D214134</td>
<td>10.00</td>
<td>DBE</td>
<td>0.00</td>
<td>Y</td>
<td>$3,141,685,500</td>
<td>$314,168,550</td>
<td>$247,614,110</td>
<td>$189,590,978</td>
<td>60.35</td>
<td>REGION 8</td>
</tr>
<tr>
<td>A. ESTEBAN &amp; COMPANY, INC.</td>
<td>DBE</td>
<td>Male</td>
<td>HISPANIC/LATIN</td>
<td>$471,966</td>
<td>$433,075</td>
<td>0.14</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AB CONSULTING</td>
<td>DBE</td>
<td>Male</td>
<td>ASIAN</td>
<td>$96,000</td>
<td>$58,075</td>
<td>0.02</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ABRAELIN, LLC</td>
<td>DBE</td>
<td>Female</td>
<td>WHITE</td>
<td>$276,726</td>
<td>$205,588</td>
<td>0.07</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACB ARCHITECTS, PLLC</td>
<td>DBE</td>
<td>Male</td>
<td>BLACK</td>
<td>$84,666</td>
<td>$84,666</td>
<td>0.03</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ADVANCED CONTRACTING CONCEPTS, INC.</td>
<td>DBE</td>
<td>Male</td>
<td>WHITE</td>
<td>$2,298,772</td>
<td>$2,190,788</td>
<td>0.70</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A+ECO CLEAN ENVIRONMENT LLC</td>
<td>DBE</td>
<td>Male</td>
<td>BLACK</td>
<td>$105,000</td>
<td>$54,989</td>
<td>0.02</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AEIS, LLC D/B/A ATLAS EVALUATION &amp; INS.</td>
<td>DBE</td>
<td>Female</td>
<td>ASIAN</td>
<td>$2,799,128</td>
<td>$2,570,665</td>
<td>0.82</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AI ENGINEERS, INC., P.C</td>
<td>DBE</td>
<td>Male</td>
<td>ASIAN</td>
<td>$573,390</td>
<td>$567,831</td>
<td>0.18</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ALCAIDE INC. D/B/A A&amp;J CONSTRUCTION</td>
<td>DBE</td>
<td>Male</td>
<td>HISPANIC/LATIN</td>
<td>$349,020</td>
<td>$349,020</td>
<td>0.11</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AMERICAN INTERIOR RESOURCES, INC./DBA</td>
<td>DBE</td>
<td>Female</td>
<td>WHITE</td>
<td>0</td>
<td>0</td>
<td>0.00</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>APPLE MAINTENANCE SERVICES, INC.</td>
<td>DBE</td>
<td>Male</td>
<td>HISPANIC/LATIN</td>
<td>$484,999</td>
<td>$373,519</td>
<td>0.12</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ARMAND RESOURCE GROUP, INC.</td>
<td>DBE</td>
<td>Male</td>
<td>BLACK</td>
<td>$226,000</td>
<td>$158,885</td>
<td>0.05</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AROLD CONSTRUCTION CO., INC.</td>
<td>DBE</td>
<td>Female</td>
<td>WHITE</td>
<td>$448,500</td>
<td>$77,210</td>
<td>0.02</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AXELA SERVICES, LLC</td>
<td>DBE</td>
<td>Female</td>
<td>WHITE</td>
<td>$778,541</td>
<td>$778,541</td>
<td>0.25</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Calculates percent attainment - great for monitoring overall progress towards the goal
Commitment to the Goal via Florida’s EOC system

Necessary to monitor overall commitment to the DBE goal in D/B “anticipated commitments” vs “actual commitments”
System Checks

• Data is only useful if it is:
  ➢ Accurate
  ➢ Complete
  ➢ Timely

• Must be manually checked randomly:
  ➢ CUF interviews/worksite reviews
  ➢ Examination of documents supporting CUF
  ➢ Random follow-up calls with subs to check prompt pay
  ➢ Excel spreadsheet of commitments/attainments/tiering
Summary of Data Collection Systems:

Electronic systems are necessary to manage the volume of data:

• Not all systems provide the data you need
• Demo the system
  ➢ How is data presented
  ➢ Who has access
  ➢ Who provides training
• Define the system in the RFP
• Don’t assume data is accurate
LESSON FOUR

DBE Supportive Services
The DBE Supportive Services (DBE/SS) program authorizes FHWA to allocate $10M annually among State DOTs to administer programs that assist DBEs and other women and minority owned firms.

As of Fiscal Year 2015, every State DOT requesting FHWA DBE/SS funds must include a Business Development Program (BDP) component as part of their proposal.

The goal of a BDP is to evaluate and provide a structured process for DBEs to receive firm-specific training and technical assistance to increase opportunities for successful participation as primes or subcontractors on highway-related contacts.
DBE Supportive Services and Major Projects

- Florida uses support services strategically by targeting a substantial portion to Major Projects.
- Virginia and a few other states contractually require ongoing support of DBEs and small businesses by the state AND contractor (leveraging resources).
- Contractor sponsored support services help DBEs succeed without crossing the CUF threshold.
- Regardless, support for businesses should be early, broad and ongoing.
Questions?