



# DBE PRESENTATION US DOT –OIG



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# DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

- Legislatively mandated USDOT program that applies to federally-assisted contracts issued by USDOT for highway, transit and aviation projects - recipients such as State Transportation Agencies and Federal Aviation Administration
- Program established in 1982 to ensure federally assisted contracts are made available for small business concerns owned and controlled by socially and economically disadvantaged individuals
- USDOT Regulations found at 49 CFR Parts 23 and 26

# DBE

- For-profit small businesses where economically disadvantaged individuals own at least 51% interest and also control management and daily business operations.
- To be regarded as economically disadvantaged, an individual must have a personal net worth that does not exceed \$1.32 million.

# Federal Program

- Administered by each state
- Since 1983 at least 10% of federal DOT funds will be for DBEs



# DBE GOALS

- 10 % overall
- State determines amount for each area and amount is contractual through prime contracts issued by the state.
- Prime Contractor is responsible for meeting the goal.
- Prime Contractor certifies to the state the goal was met

# FHWA Funds



# FTA FUNDS





# FAA FUNDS





# Money Flow

- Federal Highway Administration (FHWA), Federal Transit Authority (FTA) and Federal Aviation Authority (FAA) approve the obligation
- State awards a contract and they identify their subcontractors to include DBEs and their share of funding to meet contract DBE goal.



# SPECIAL PROVISION 1273

- 1273 must be physically incorporated in all Federal – Aid design build contracts, in all subcontracts and in lower tier subcontracts
- Each weekly payroll submitted shall be accompanied by a Statement of Compliance
- Subcontractor shall furnish a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work
- No portion of the contract shall be sublet, assigned or otherwise disposed of except with written consent of the contracting officer

# 49 CFR Part 26

## OBJECTIVES

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts with highway, transit & airport contracts
- Create a level playing field for DBEs to compete
- Ensure firms fully meet eligibility standards to participate
- Promote the use of DBEs in federally-assisted contracts
- DBE participants should be independent of the Prime Contractor
- Assist the development of firms that can compete successfully in the marketplace outside the DBE program

# 49 CFR PART 26.55

- (a) (1) Count only the value of the work actually performed by the DBE's own forces toward the DBE goal. Including supplies purchased or equipment leased by the DBE except supplies and equipment the DBE subcontractor purchased or leased from the prime contractor or its affiliate.
- (c) (1) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a Commercially Useful Function (CUF) on that contract. CUF is when the DBE is responsible for execution of the work by carrying out its responsibilities by performing; managing; supervising; negotiating prices; determining quantity and quality; ordering; installing and paying for material.

# 49 CFR PART 26.55

## Continued

- (c) (2) A DBE does not perform a commercially useful function 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 the DBE participation.
- (d) (7) a lease must indicate that the DBE has exclusive use of and control over the truck. Leased trucks must display the name and identification number of the DBE.



# Disadvantaged Business Fraud Indicators



- DBE lacks equipment, training, and expertise to perform
- Shared employees between Prime or non-DBE companies
- Business names on vehicles and equipment not the DBE's
- Orders and payment for materials made by someone other than DBE
- DBE owner never at job site
- Prime contractor always uses the same DBE
- DBE only works for one Prime
- Shared financial accounts

# DBE SCHEMES

- Pass Through – using DBE to process paperwork or shifting prime employees onto DBE payroll
- Contractor misrepresents who performed the contract work in order to increase job profit while appearing to be in compliance with contract goals of the DBE



# Schemes Continued

## ■ False Eligibility

- The DBE does not belong to one of the recognized socially or economically disadvantaged groups
- The DBE provides false information concerning size or financial status
- Hidden assets or false statements concerning origination of capital

# Schemes Continued

- Women-owned business enterprises
  - Usually a female relative (wife, daughter, sister, etc.) or a prime or subcontractor
- False statements concerning ownership and control
- False statements concerning financial information and capital
- No knowledge, expertise or licenses in the type of business being operated



# DOT CHARGES



- 18 USC 371 Conspiracy
- 18 USC 1020 False Statement (Federal Highway Projects)
- 18 USC 1341 Mail Fraud
- 18 USC 1343 Wire Fraud
- 18 USC 1956 & 1957 Money Laundering
- 31 USC 3729 Civil False Claims



# Civil False Claims



- Government can get up to 3 times value of false claims
- \$11,000 for each false claim



# What Happens



- Adopt an Ethics Code and Corporate Compliance Program
- Appoint a Compliance Officer
- Retain an Independent Monitor to Assess Performance
- Suspension
- Debarment
- Loss of DBE Status



# What Happens



- Prison





# Contact Information

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