

DBE Program

*Monitoring Practices and Fraud
Detection & Prevention*



**Federal Aviation
Administration**

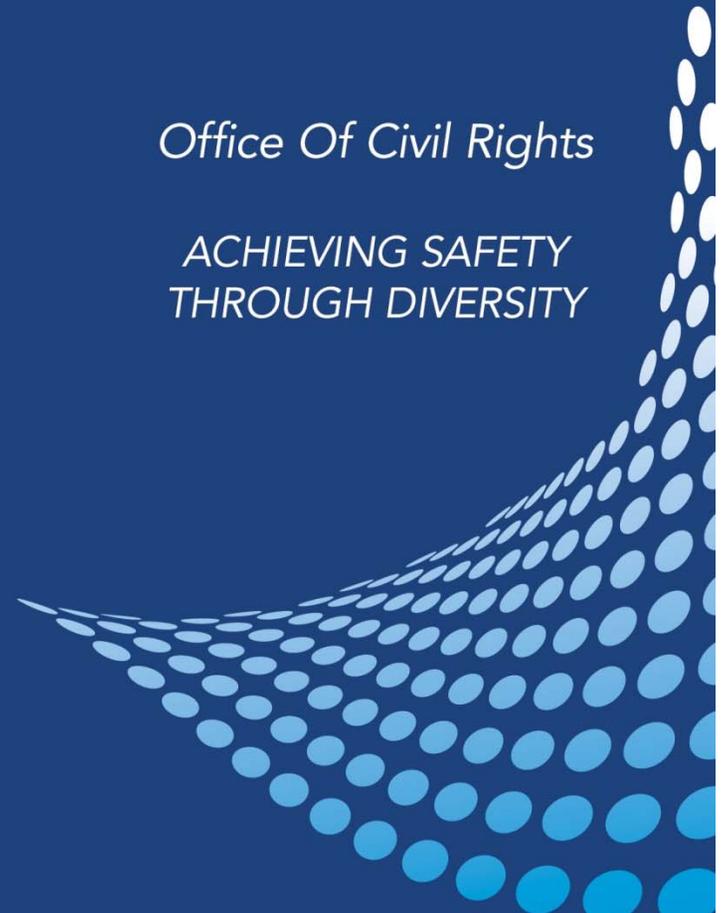
Office Of Civil Rights

*ACHIEVING SAFETY
THROUGH DIVERSITY*

Airport Business Diversity Conference

San Diego, CA

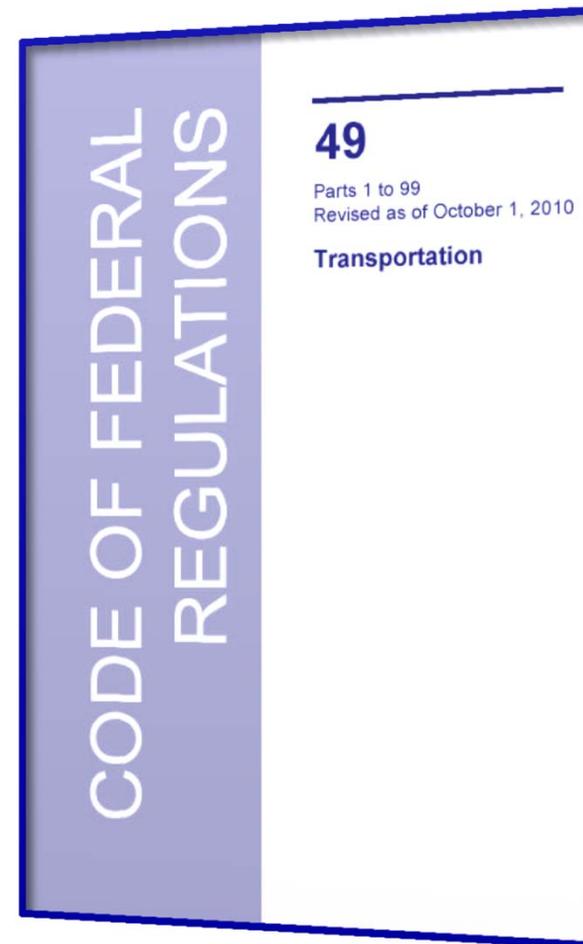
June 11, 2013



DBE Program – 49 CFR Part 26

Who must have a DBE program “plan”?

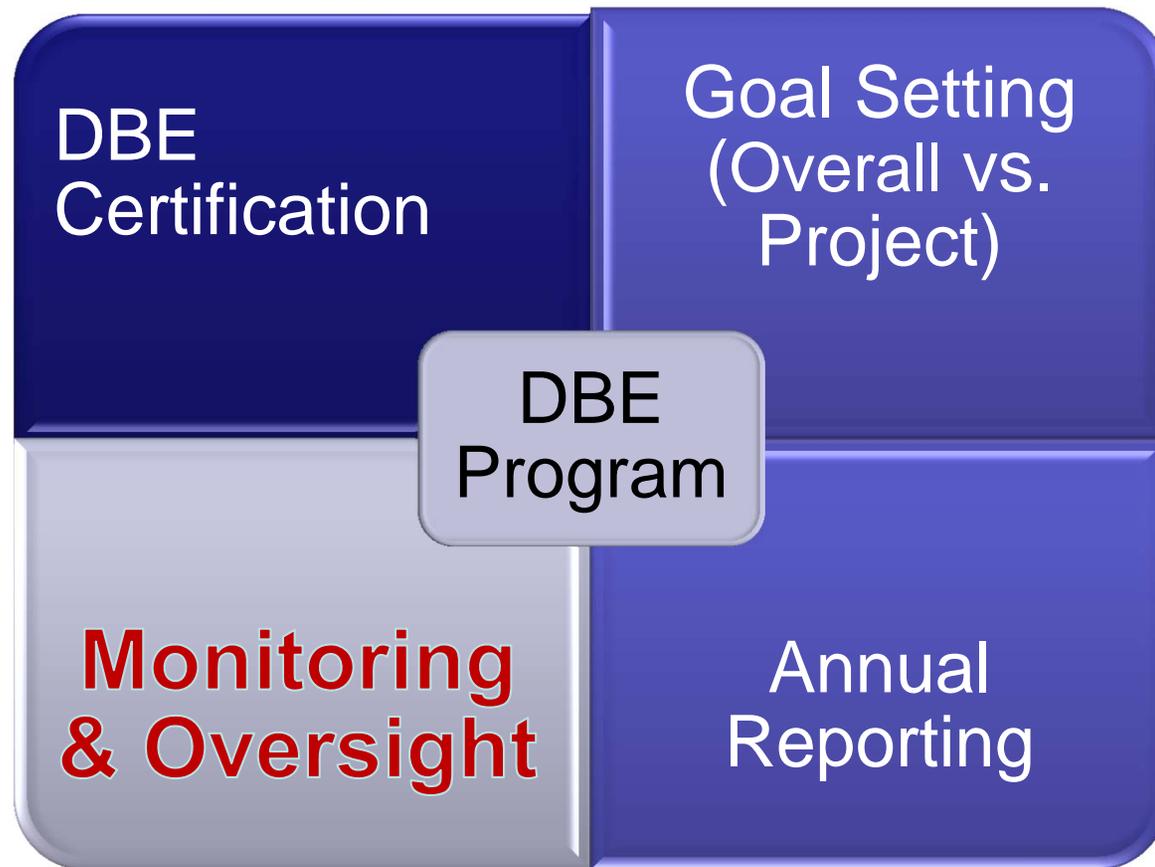
§ 26.21(a)(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.



DBE Program Plan & Overall DBE Goal – Any Difference?

- DBE Program – *Update as Necessary*
 - Your overall plan
 - Identifies DBELO
 - Policy Statement
 - Includes several attachments
- Overall DBE Goal – *Due every three years*
 - A section of your DBE Program plan, typically included as an attachment

DBE Program: Key Elements



Monitoring and Oversight

- Contract Provisions
- Good Faith Effort Review
- Performance of Participants
- Site Visits
- Commercially Useful Function

Contracts Provisions

Must contain these provisions:

- Non-discrimination (26.13)
- Prompt payment (26.29(a))
- Retainage (26.29(b))
- Enforcement Provisions (26.29(d))

26.13(b) – Contract Assurance

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Prompt Payment

- No later than **30** days after completion and acceptance
 - “Satisfactory Completion” means portion of the work has been completed and accepted (26.29(c))

Retainage – Three Options

Airport	Prime	DBE
Does not withhold from Prime	Does not withhold from Sub	
Does not withhold from Prime	Does withhold from subs	Prime must pay within 30 days of completion of subcontractor's work
Withholds from Prime Partial payments to prime upon completion of work	Does withhold from Subs	Prime must pay all retainage to sub for completion of accepted work within 30 days of prime's receipt of payment from Airport

Enforcement Provisions

- Appropriate means to enforce DBE requirements
 - Penalties for failure to comply
 - Delay or postponement of payment – Good cause and prior approval
- Additional Mechanisms
 - Use of dispute resolution
 - Clause on payment withholding
 - Other – consistent with state and local law

Federally Assisted Contracts - RESTRICTIONS

- All contracts that include Federal funds must incorporate the DBE program and may NOT impose local MBE/WBE subcontracting goals
- Federally-funded contracts may NOT include local hiring goals or preferences 49 CFR § 18.36

Monitoring & Oversight

- 26.37(a) Monitoring performance of Program Participants
- 26.37(b) Ensure work committed to DBEs is performed by DBEs
 - Written certification – reviewed contracting records
 - Written certification – monitored work sites

Monitoring - 26.37 (c)

- Running tally of attainments
- Compare attainments to commitments

Site Visits

- 26.37(b) - Written Certification
- Commercially Useful Function
- Fraud Prevention

COMMERCIALLY USEFUL FUNCTION (CUF)

- Prime Contractor and Airport only get credit when DBE performs a CUF
- Do not confuse CUF with certification
- May only count the value of the actual work or service it is “actually” performing on specific contract. DBE has to be certified for that specific trade.

Performance

- 26.53(a) Good Faith Effort Reviews
- 26.53(b) Responsive v. Responsible
- 26.53(f) Termination of DBEs
- 26.55 Counting DBE participation toward meeting DBE goals –
Commercially Useful Function

Good Faith Efforts

- Rigorous review of documented efforts
- Review performance of other bidders
- Lowest price not sufficient reason to reject
- Review all subcontractor quotes
- Follow up with DBEs to see if contacted
- Beware of meaningless, pro-forma contact/solicitation

Termination & Substitution of DBEs

- Notify DBE of intent to terminate
- Five days to respond
- Verification of “Good Cause”

Enforcement Actions

- 26.107
- Fraud Prevention

Fraud in Work Performance

- Areas where fraud can occur:
 - Primes completing work committed to DBEs
 - Erosion of independence through resource sharing
 - Payment

FRAUD

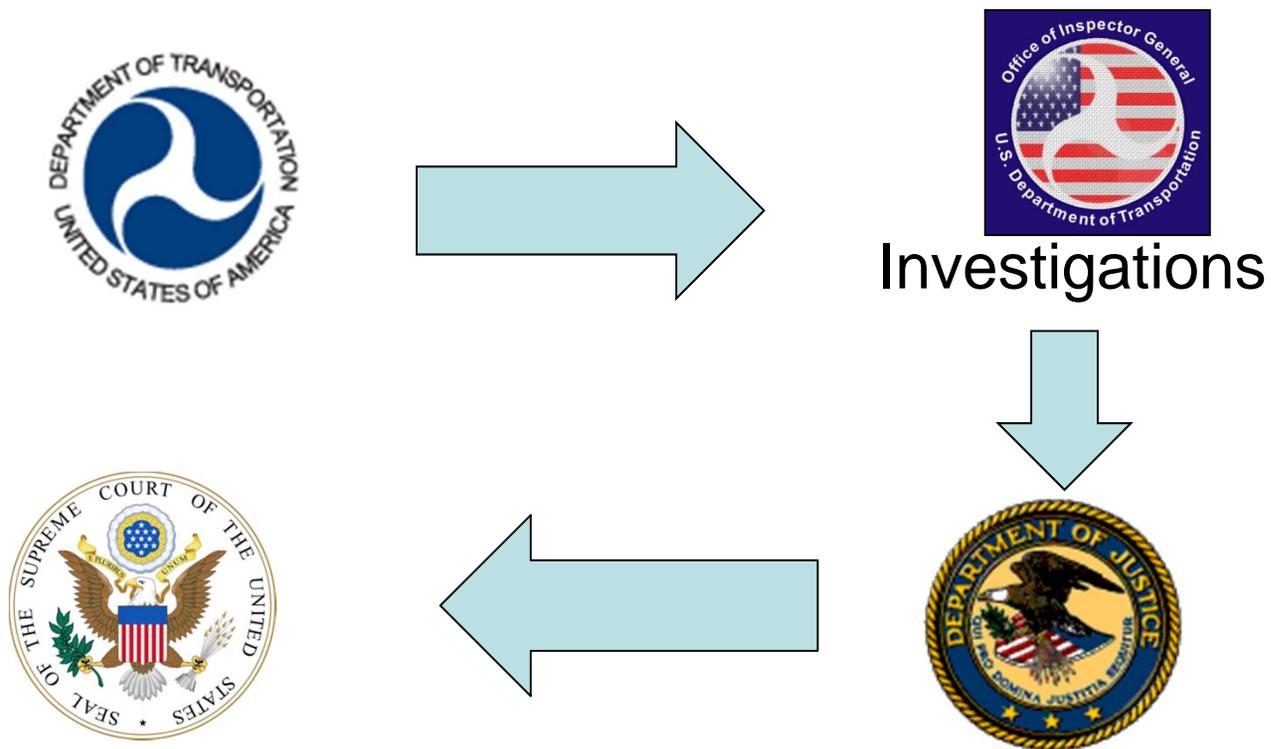
A Generic Term That Embraces All the Ways One Person Can Falsely Represent Something to Another in Order to Induce That Person to Surrender Something of Value.

Detecting Fraud

- Monitor work performed
- Examine/Question Certification
- Preventing
 - Have a plan/train staff
 - Use contract remedies
- Suspected Fraud
 - Who to call
 - Penalties to invoke

The process:

- Referral-Investigation - Prosecution



Red Flag Indicators of DBE Fraud

- Lack of expertise
- Employee shuttling between prime & sub
- Vehicle Magnetic Signs
- Payment for necessary supplies
- Prime facilitates purchase of DBE-owned business
- Absentee owner
- Prime always uses same DBE
- Financial agreements between Prime and DBE
- Joint bank accounts (Prime/DBE firm)
- No written contracts

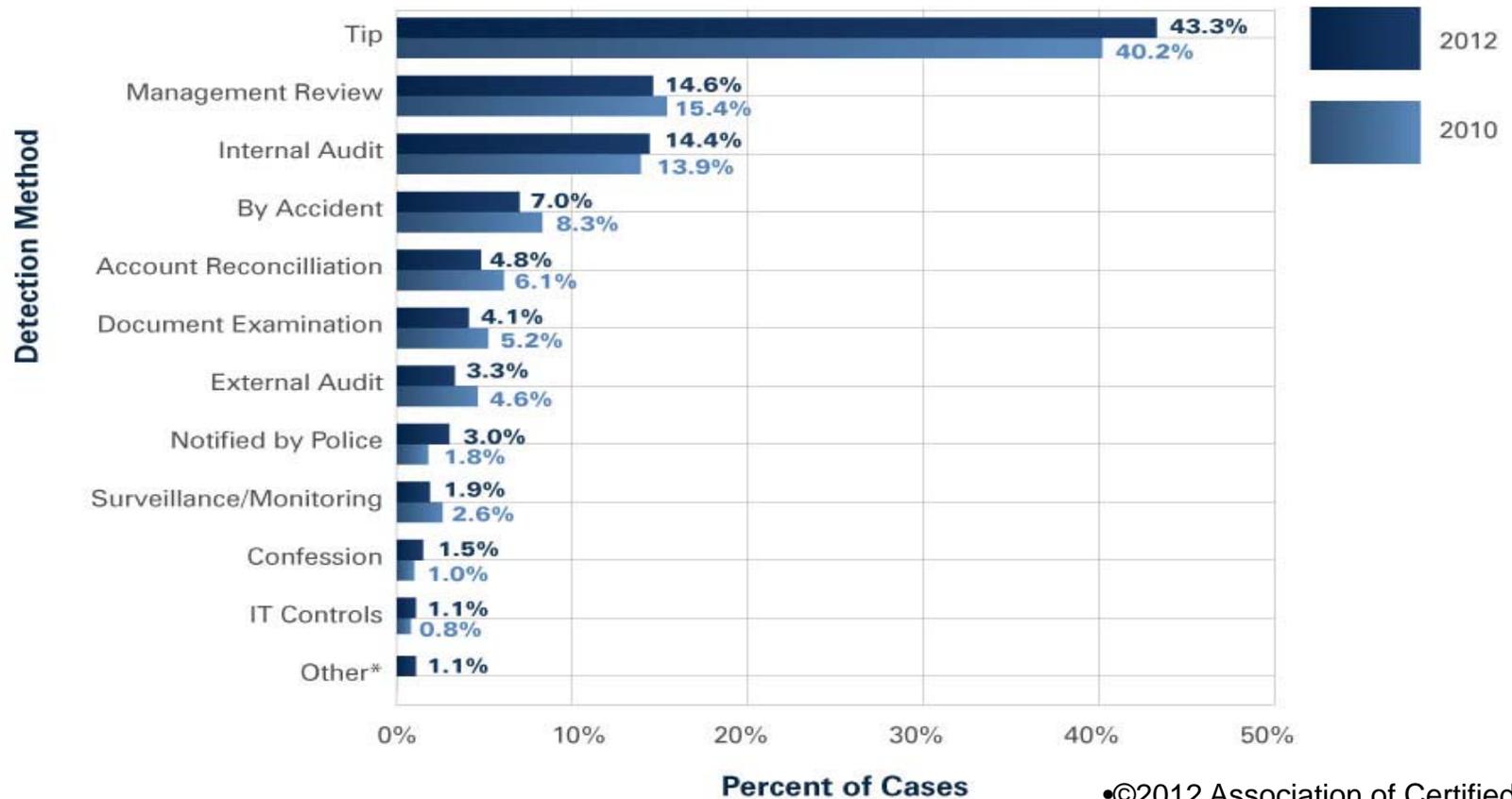
Detection of Fraud Schemes



- Fraud is much more likely to be detected by tips than by any other method.

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Detection of Occupational Frauds



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Why Employees Do Not Report Fraud

According to a Business Ethics Study (Association of Certified Fraud Examiners), employees do not report fraud because they:

- ✓ **Believe nothing will happen.**
- ✓ **Don't know who to contact.**
- ✓ **Think the report will not be kept confidential, so supervisors or co-workers might retaliate.**
- ✓ **Believe the situation has no personal impact on them.**

Sample Cases

- False Eligibility
- Bribery to Falsify DBE Certification Background
- DBE firm does not complete any of the contracted work
- DBE sells its status to another company who completes the work

REMEDIES

- Contract Specific Remedies
- Civil False Claims Remedies
- Criminal Prosecution Remedies
- Department of Transportation Agency Remedies

DOT/OIG Hotline

- **Call:** 1-800-424-9071
- **E-Mail:** Hotline@oig.dot.gov
- **Write:** U.S. DOT/OIG
P.O. Box 23178
Washington, DC 20026-0178



<http://www.oig.dot.gov/fraud-awareness-posters>



Disadvantaged Business Enterprise (DBE) Fraud

Under this scheme, a contractor misrepresents who performed the contract work in order to increase job profit while appearing to be in compliance with contract goals for involvement of minority- or women-owned businesses.

Recognize and Report Fraud in Federally Funded Programs, Contracts, and Grants
(800) 424-9071

U.S. Department of Transportation
Office of Inspector General

Selected "Red Flag" Indicators of Disadvantaged Business Enterprise (DBE) Fraud

- ✓ DBE owner lacking background, expertise, or equipment to perform subcontract work
- ✓ Employees shuttling back and forth between prime contractor and DBE-owned business payrolls
- ✓ Business names on equipment and vehicles covered with paint or magnetic signs
- ✓ Orders and payment for necessary supplies made by individuals not employed by DBE-owned business
- ✓ Prime contractor facilitated purchase of DBE-owned business
- ✓ DBE owner never present at job site
- ✓ Prime contractor always uses the same DBE
- ✓ Financial agreements between prime and DBE contractors
- ✓ Joint bank accounts (Prime/DBE)
- ✓ Absence of written contracts

Contact OIG using any of the following methods:

Online complaint form: www.oig.dot.gov/dot-oig-hotline-complaint-form

Telephone: (800) 424-9071

Fax: (704) 556-0732

E-mail: holine@oig.dot.gov

Mail: USDOT Inspector General
1200 New Jersey Ave. S.E., Room W73-104A
Washington, DC 20590

Note: The OIG Hotline is obligated to expeditiously forward all safety-related complaints to USDOT's safety regulatory agencies for action, as appropriate.



U.S. Department of Transportation
Office of Inspector General

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ACHIEVING SAFETY
THROUGH DIVERSITY



Federal Aviation
Administration



DBE/ACDBE Program Compliance Team

Regional DBE/ACDBE Program Compliance Team Specialists	Name	Phone	Email
Alaskan Region - Alaska	Sophia Soler	718-553-3443	sophia.soler@faa.gov
Central Region – Iowa, Kansas, Missouri, Nebraska	Patricia Wright	310-725-3955	patricia.wright@faa.gov
Eastern Region –Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia	Keturah Pristell	404-305-7392	keturah.pristell@faa.gov
Great Lakes Region –Illinois, Indiana, Michigan, Minnesota, North Dakota, Ohio, South Dakota, Wisconsin	Nancy Cibic	847-294-7182	nancy.cibic@faa.gov
New England Region –Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Keturah Pristell	404-305-7392	keturah.pristell@faa.gov
Northwest Mountain Region – Colorado, Idaho, Montana, Oregon, Utah, Washington, Wyoming	Ricky Watson	310-725-3940	ricky.watson@faa.gov
Southern Region – Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, Virgin Islands	Gene Roth	404-305-5256	gene.e.roth@faa.gov
Southwest Region – Arkansas, Louisiana, New Mexico, Oklahoma, Texas	Dolores Leyva	310-725-3939	dolores.leyva@faa
Western-Pacific Region – American Samoa, Arizona, California, Guam, Hawaii, Nevada	Patricia Wright	310-725-3955	patricia.wright@faa.gov



Thank You!

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