



# DBE Monitoring & Enforcement



Federal Aviation  
Administration

*Office Of Civil Rights*

ACHIEVING SAFETY  
THROUGH DIVERSITY

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Conference for Airports**

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# Monitoring and Enforcement

## 1) Regulatory Requirements





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**1) Regulatory Requirements**

**2) Strategies for Implementation**





# Monitoring and Enforcement

- 1) Regulatory Requirements
- 2) Strategies for Implementation
- 3) Self-Assessment





# Regulatory Requirements

**49 C.R.F. 26.37:**





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**(a) Implement Appropriate Mechanisms to Ensure Compliance by All Program Participants**



# Regulatory Requirements

## 49 C.R.F. 26.37:

- (a) Implement Appropriate Mechanisms to Ensure Compliance by **All** Program Participants
  
- (b) Ensure Work Committed to DBEs is **Performed** by DBEs as indicated in letters of intent





# Regulatory Requirements

## 49 C.R.F. 26.37:

- (a) Implement Appropriate Mechanisms to Ensure Compliance by **All** Program Participants
- (b) Ensure Work Committed to DBEs is **Performed** by **DBEs**
- (c) **Running Tally** of DBE Participation







# Regulatory Requirements: Appropriate Compliance Mechanisms

## Create **Written** Policies and Procedures for Contract and Worksite Reviews

- Create a document certifying that DBE contracts and worksites are inspected
- Document must detail exactly what was reviewed, by who, and when
- Airport staff like Concessions Managers and Construction Managers are ideal staff to help conduct and process written certification reviews





# Regulatory Requirements: Appropriate Compliance Mechanisms

## Prompt Payment Mechanisms

Create Written Policies and Procedures as  
Appropriate

- Prompt Payment & Retainage Verification Process



# Regulatory Requirements: Appropriate Compliance Mechanisms

Create Written Policies and Procedures as Appropriate

## The Termination Process

- Terminating DBE Subcontract Process must be clearly defined in the airport's DBE Program AND within each DBE/ACDBE subcontract.
- Prime must notify the airport and DBE/ACDBE of request to terminate and allow 5 days for the firm to respond to allegations, if desired.





# Regulatory Requirements: Appropriate Compliance Mechanisms

## Identify Appropriate Enforcement Mechanisms

- Progressive discipline policy
  - Breach of Contract Remedies

**BREACH OF  
CONTRACT**





# Regulatory Requirements: Appropriate Compliance Mechanisms

## Identify Appropriate Enforcement Mechanisms

- **Progressive discipline policy**
  - Breach of Contract Remedies
  - **Reporting DBE Fraud**

**BREACH OF  
CONTRACT**

**FRAUD**





# Enforcement Tools

- What does the contract say?



# Enforcement Tools

- What does the contract say?
- Withhold progress payments





# Enforcement Tools

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- Withhold progress payments
- **Terminate contract**







# Enforcement Tools

- **What does the contract say?**
- **Withhold progress payments**
- **Terminate contract**
- **Internal prequalification process remedies**



# Enforcement Tools

## Enforcement Actions – Contractors – 49 CFR §26.107

- Involve OIG
- **Suspension / Debarment**
  - ❑ False Representation as DBE
    - ❑ Creating a front
    - ❑ Using a DBE that does not work
  - ❑ Attempt to Use Ineligible firm
  - ❑ **Over-reporting**



# Regulatory Requirements: Ensure DBE's Performance of Contracts

## Written Certification of Contract Review

- Contract Review Process
  - DBE Subcontract Review



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## Written Certification of Work-Site Monitoring

- Site Visit reports / forms
- Follow-up reports (If required)



# Regulatory Requirements: Ensure DBE's Performance of Contracts

## Project Oversight is a Team Effort!

- Involve Project Inspectors and Project Engineers
- Create DBE Oversight as essential job function of multiple parties



# Regulatory Requirements: Running Tally of DBE Participation

- Ensure Prime is Meeting DBE Commitment



# Regulatory Requirements: Running Tally of DBE Participation



- Ensure Prime is Meeting DBE Commitment
- Track DBE Awards and Commitments



# Regulatory Requirements: Running Tally of DBE Participation



- Ensure Prime is Meeting DBE Commitment
- Track DBE Awards and Commitments
- Track Payments made to DBEs







# Strategies for Implementation

## Complaint Investigations

- **Specific Allegations** of Non-compliance





# Strategies for Implementation

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- **Specific Allegations of Non-compliance**

## Compliance Reviews

- **Overall Assessment of DBE Program Implementation**





# Strategies for Implementation

## Complaint Investigations

- Specific Allegations of Non-compliance

## Compliance Reviews

- Overall Assessment of **DBE Program Implementation**

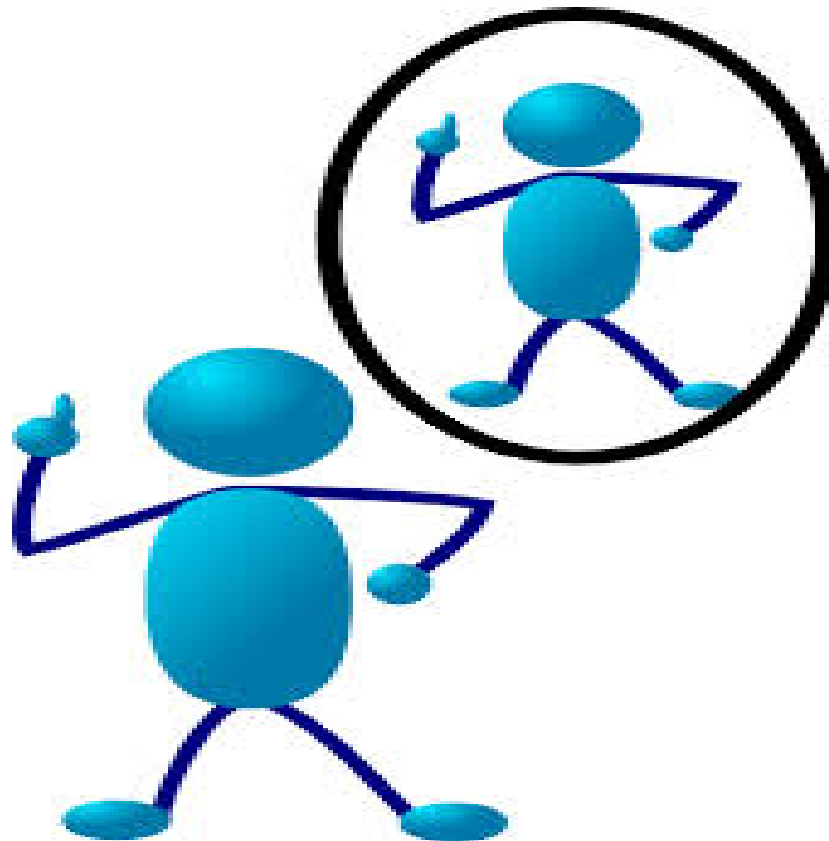
## Enforcement Actions

- Conciliation Agreement
- Finding of Non-Compliance
- Restrict Drawdowns of Funds
- Inability to Start, Continue, or Complete DOT-assisted Projects





# Self-Assessment



# Self-Assessment

- **How are you reviewing initial participation plans and letters of intent (commitments)?**
- **How are you currently monitoring contracts and worksites to ensure they match commitments?**
- **How do you track and compare commitments and payments?**
- **How often do you monitor?**
- **What are your enforcement provisions?**



# Questions?



## Thank You!

