

Mid-Coast Corridor Transit Project



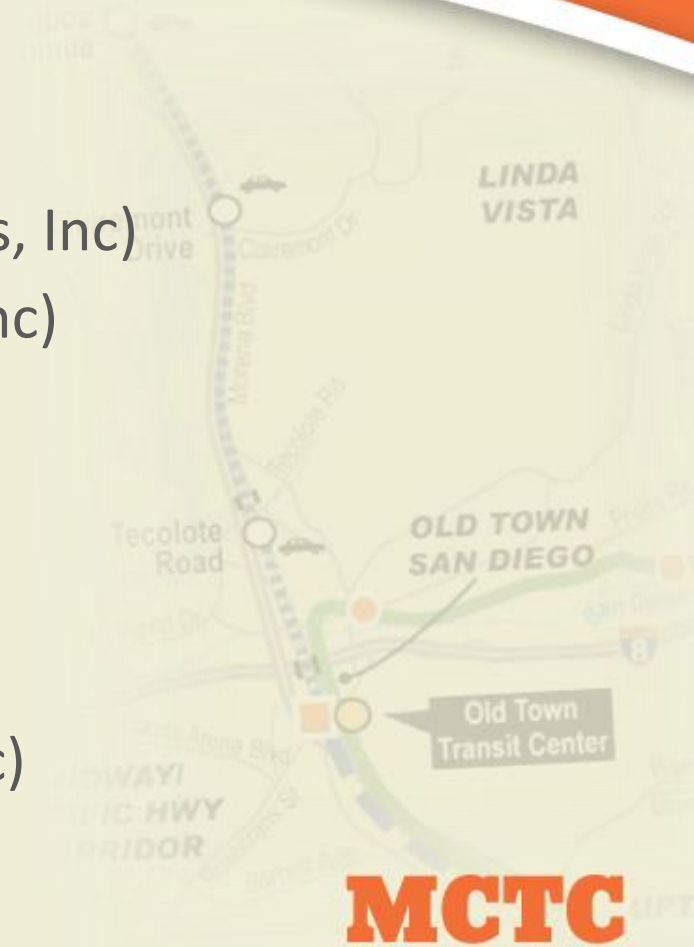
Mid Coast Transit Constructors (MCTC) DBE Program Commercially Useful Function (CUF) Compliance Training

November 29, 2016



Welcome and Introductions

- MCTC DBE Compliance Team
 - Alison Lobenstein (Modern Times, Inc)
 - Cory Raymond (Modern Times, Inc)
- SANDAG Representatives
- Presenter:
 - Jerry Neufeld (Modern Times, Inc)



MCTC



Mid-Coast Transit Constructors
Stacy and Witbeck · Herzog · Skanska

Training Purpose

- Mid Coast Corridor Transit Project is Federally Assisted **(FTA)**
- DBE Requirements Apply (Overall 11.3% DBE Goal)
- MCTC Responsible for Meeting DBE Requirements
- Team in Place to Manage MCTC DBE Compliance Activities
- Need Contribution from Entire MCTC Team to Succeed
- Training to Provide Information on What is Required
- Point of Contact for MCTC DBE Compliance Matters:
 - ❖ Cory Raymond, MCTC DBE Program Coordinator
(craymond@mctcjr.com)

Why Comply with DBE Requirements?



It's the Law!

DBE Enforcement

DOT / OIG Statistics

1999

- 3 DBE fraud cases opened, 5 indictments
- 0 fines and recoveries

2000 - 2006

- 70 indictments
- 51 convictions
- \$17.3 million in fines and restitution

2008 - 2012

- 319 convictions
- \$572 million in fines & restitution
- 41 debarments and suspensions

Potential Enforcement Actions



What are some potential enforcement actions that can be taken for non-compliance?

Enforcement Actions

Company	Enforcement Action
Schiavone	\$23 M and required compliance program
Perini	\$9.75 M and President sentenced to 12 years in jail and \$34.5 M
Dragados/Judlau JV	\$7.5 M
Minnesota Transit Constructors	\$4.6 M
Kleinberg Electric	\$936 K
McHugh Construction	\$14 M

DBE Credit

To receive DBE credit, the DBE company must be certified under the appropriate NAICS code(s) and perform a Commercially Useful Function (CUF).

To perform a CUF, DBE company is responsible for the execution of the work:

- Performing/Installing
- Managing/Supervising
- Negotiating Pricing
- Paying for Materials/Services



DBE Credit

DBE Contractor

- DBE Subcontractor: 100% Credit
- DBE 2nd Tier Subcontractor: 100% Credit
- Non-DBE 2nd Tier Subcontractor: 0% Credit

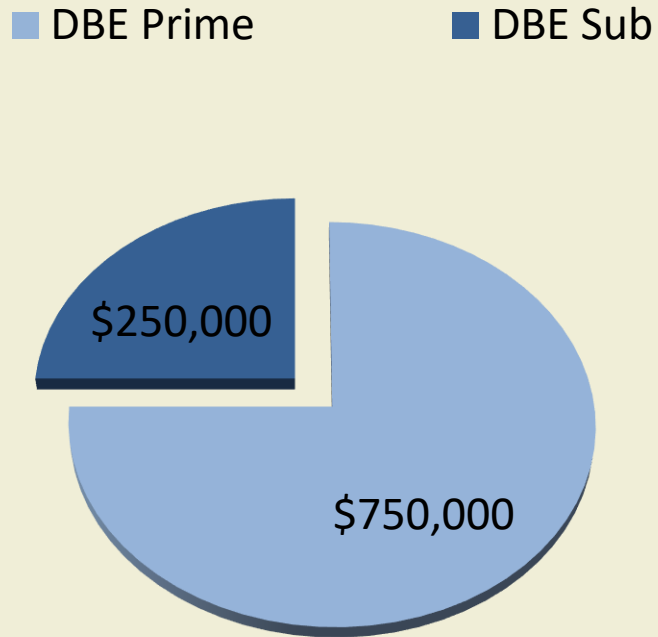
DBE Supplier

- Manufacturer: 100% Credit
- DBE Regular Dealer: 60% Credit
- Other: Fee / Commission

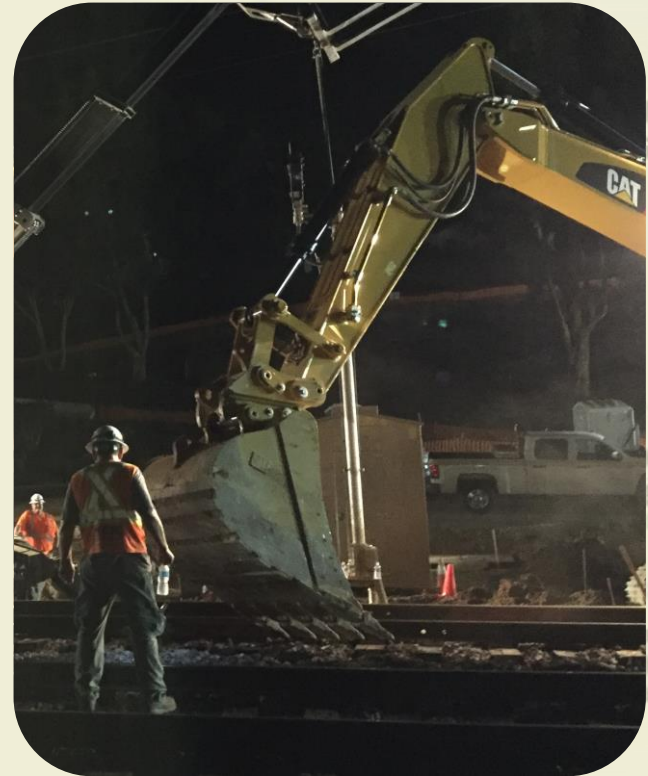
DBE Trucker

- DBE Trucker: 100%
- DBE Sub-Trucker: 100%
- Non-DBE / Sub-Trucker: Fees and Commission
- Long-term Lease

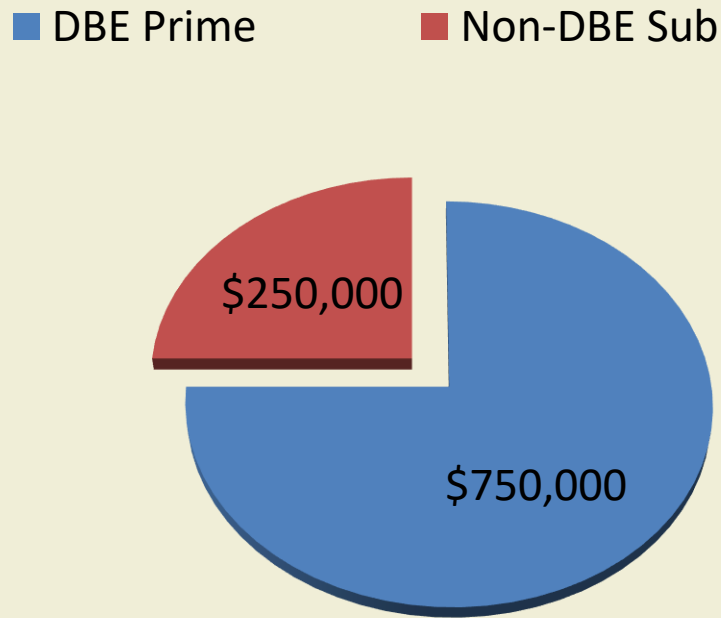
DBE Credit



Equals \$1,000,000 DBE Credit



DBE Credit



Equals \$750,000 DBE Credit



Providing Assistance

What are some of the ways that we can provide assistance?



Providing Assistance

1

A DBE firm is having difficulty obtaining bonding. Can MCTC assist?

TRUE

2

A DBE firm requires financial assistance. Can MCTC assist?

TRUE

3

A DBE firm is having difficulty finding a superintendent or foreman. Can MCTC provide one?

FALSE

4

A DBE firm requests that MCTC pay for materials or equipment used by the firm and plans on using those materials or equipment toward the goal. Can MCTC pay for the materials?

FALSE

DBE Credit

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CUF Validation / Documentation

Are these statements true or false?

1

The DBE must provide at least one of its own trucks to the project.

TRUE

2

For DBEs that are not “manufacturers,” but are brokers, dealers, or retailers, certain amounts may not be allowed. You must validate they meet the CUF criteria for distributors or brokers.

TRUE

3

If you have questions about what portions of the DBE activities are allowed as credit for DBE participation, just indicate that in your documentation.

FALSE

CUF Validation / Documentation

Are these statements true or false?

4

DBEs must be certified by the appropriate agency for the type of work assigned.

TRUE

5

MCTC can negotiate with a materials vendor or manufacturer on behalf of a DBE firm.

FALSE

6

The prime contractor can claim credit for a DBE if it loses its certification after execution of its subcontract.

TRUE

DBE Checklist

MCTC Post-Award CUF Checklist

DBE Firm Name:	Date of Review:
DBE Contact Name:	DBE Contract \$ Value:
Contract Name:	Contract Number:
Contract Start/End Dates:	DBE Certified Scopes:
MCTC Staff Completing Form:	Signature & Date:
MCTC Area Manager:	Signature & Date:
MCTC DBE Program Manager:	Signature & Date:
MCTC Project Manager:	Signature & Date:
Scope(s) of work DBE contracted to perform:	

DBE Checklist

Performance

- 1 Do the services and/or products provided by the DBE appear normal for their line of business and specifically relate to this contract? If No, please explain.
- 2 Is the DBE performing all the work required under its subcontract (On and Off Site, including Design and submittal work, **no 2nd tier** or lower subcontractors.)? If No, please explain.
- 3 Is the DBE certified (according to the appropriate electronic database) to perform the particular work required under its subcontract? If No, please explain.
- 4 Is the DBE working without the assistance of other firms? If No, please explain. Note any assistance from Contractor, second-tier subcontractors (DBE and non-DBE) or other firms.
- 5 Overall, does the DBE subcontractor have control over its work (*i.e.*, provide the labor, equipment and supervision) as required by its subcontract? If No, please explain.
- 6 If the DBE firm is using a 2nd tier subcontractor, is the 2nd tier subcontractor's work claimed as part of the DBE credit? (If yes, a DBE CUF Checklist for the 2nd tier subcontractor is required)

DBE Checklist

Management and Supervision

- 7 Does the DBE supervise its own work?
- 8 Does the DBE have a superintendent, foreman or other representative on the job site? If Yes, provide name of onsite representative and frequency of jobsite visits.
- 9 Does the DBE's onsite representative effectively manage the DBE's work without a substantial amount of assistance from Contractor or another firm? If No, please explain.
- 10 Is the DBE's onsite representative a regular employee of the DBE? If No, please explain.
- 11 Has the DBE's owner been present on the jobsite? If Yes, indicate how often and for what purpose.
- 12 Does the owner understand the work? Explain.
- 13 Are the e-mail addresses for the DBE firm either from an e-mail service provider (Gmail, Hotmail, EarthLink, etc) or based upon the DBE firm's domain? (if not, provide examples of e-mail addresses that the DBE is using)

DBE Checklist

Labor / Workforce

- 14 Does the DBE have employees on the job to perform work? If Yes, indicate how many workers are onsite and how often (in general).
- 15 Does the DBE use only workers who are on its payroll? If No, please explain.
- 16 Does the DBE maintain its own payroll and prepare its own payroll reports? If No, please explain.
- 17 Are the paychecks for the DBE firm's employee's issued on the DBE firm's checks?

DBE Checklist

Tools / Equipment

- 18 If the DBE is using any heavy equipment (such as a compressor or crane), does the DBE own the equipment? If No, please explain, and note whether if another firm has loaned, rented or leased heavy equipment to the DBE.
- 18(a) Is such equipment under the direct supervision of the DBE? If No, please explain.
- 18(b) Is such equipment operated by an employee of the DBE? If No, please explain.
- 19 Do signs or markings on the DBE's, equipment or gear indicate that those items belong to the DBE? If No, please explain.

DBE Checklist

Materials - Purchased by Subcontractors /Service Providers

- 20 Did the DBE determine how to obtain the materials and negotiate price? If No, please explain.
- 21 Did subcontractor get a quote for the material? If so, get a copy.
- 22 Did the DBE order the materials and schedule the delivery of those materials and was it properly addressed to the DBE? If No, please explain.
- 23 If joint checks were used, was the use of joint checks approved by the project Owner?
- 24 Are all dealings with the DBE's vendors and/or suppliers done through the DBE firm including delivery coordination, submittals, material certifications, etc.? (If no, provide the extent and basis of the direct dealings by Contractor with the DBE's suppliers or vendors)

DBE Checklist

Materials - Purchase Orders

- 25 If the DBE is acting as a "regular dealer," is it a business that sells, on a regular basis, the type of materials purchased for this project? If No, please explain.
- 26 If the DBE is acting as a "regular dealer," does it have an established storage facility and inventory for the type of materials purchased for this project? If No, please explain.
- 27 If the DBE is acting as a "regular dealer" of bulk material and does not store the material, does the DBE own or have long term leases for the transportation equipment necessary to deliver the material? If No, please explain.
- 28 If the DBE's primary function is to manufacture construction products, do they have an established factory or assembly location?

DBE Checklist


DBE Trucking Firms

- 29 If the DBE is acting as a trucker, does the DBE appear to be responsible for the management and supervision of the entire trucking operation? If No, please explain.
- 30 Does the DBE itself own and operate at least one fully licensed, insured and operational truck used on the hauling agreement? If No, please explain.
- 31 Do you have proof of Title (Ownership) and registration (VIN # if required by the Project Owner) for all DBE trucks used on the project?
- 32 Does the DBE lease trucks from a third party? If Yes, indicate DBE status of third party and how many additional trucks are leased and how many non-DBE trucks are leased.
- 33 Does the DBE have signs or markings on the trucks showing they own the vehicles (e.g.: magnetic signs, watch for signs placed over the true owners signs)? (Note: credit only given for truck cab.)

What to Do if You Notice a Red Flag

Notify the MCTC DBE Team!

Performance Red Flags:

- 
- A portion of the DBE's Work being done by the Prime contractor or jointly with another contractor
 - Employee working for both the Prime and the DBE
 - Equipment used by DBE belongs to Prime or another contractor with no formal lease agreement
 - DBE equipment signs and markings cover another contractor's identity

Investigate

Resolve

Document

Action

CUF Review Group Activity

In your group, complete:

- The MCTC CUF Checklist for the situation
- Note any concerns you have
- Note any follow-up that needs to happen
- Document your efforts
- Select a spokesperson



CUF Review Activity

Debrief:

- Describe the scenario
- Report your results
 - Concerns that you have
 - Follow-up needed
 - What was documented



Summary and Next Steps

What next steps do you see that you can take to ensure compliance with DBE requirements?

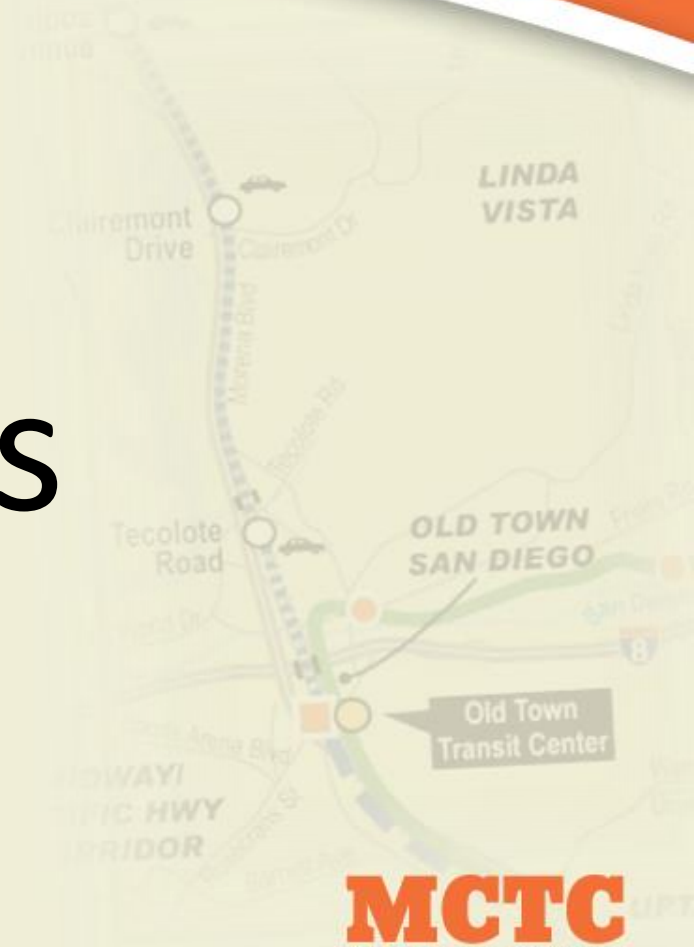


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Questions?

Answers



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