



National Asphalt Pavement Association

Ethics And Integrity In The Post Enron Era

Cordell M. Parvin
The Parvin Law Firm

ENR

Engineering News-Record

Gasser
Gasoline
prices hit
record in
the U.S.

Probing
U.S. investi-
gating disad-
vantaged
businesses

Rebuilding

OIG is now investigating 42 cases in 17 states and territories for DBE fraud. The six-year probe has resulted in 40 indictments, 29 convictions and 10.7 million in fines.

“There is out-right fraud in surface transportation contracts and there are problems with airport concessions,” says David Barnes, OIG spokesman.

INVESTIGATIONS

Feds Search Two Central Artery Subs In National Probe of Sham DBEs



▲ **Close Ties.** U.S. DOT is looking into family connections between subs on Boston job.

federal investigation disadvantaged busi- hit Boston's \$14.6-bil- y/Tunnel project. The emolition firms were his month as officials fraud schemes. e U.S. Transportation the Inspector General d Testa Corp. and PT nfield, Mass. Testa is t \$40 million in CA/T omolish the Interstate- duct and High Bridge les River.

PT, a sub on \$14 million in project demolition work, is owned by Pamela J. Ciampi, sister to Steven Testa, owner of Testa Corp. OIG will not publicly con- s, but in general, mate- wned and could be pre- prosecutor and grand t. PT, a state-certified enterprise/disadvan- terprise (WBE/DBE), ion subcontractor on ts totaling \$44 million. p be removed on one act in May 2003 and but [it is] proceeding our,” says Michael P. ject director.

The \$30-million subcontract was part of a \$415-million contract held by Modern Continental Construction Co. Inc., Cambridge, Mass. PT withdrew because it could not keep up with an accelerated schedule, sources say. Testa is now completing the work. “Once everything is reviewed, I am confident the federal government will determine that PT Corp. is a legitimate company and a legitimate WBE/DBE,” says Tracy A. Miner, a PT and Testa attorney. She says Testa and Ciampi worked in the family business before she started her own. “They’re both eminently qualified,” adds Miner.

OIG is now investigating 42 cases in 17 states and territories for DBE fraud. The six-year probe has resulted in 40 indictments, 29 convictions and \$10.7 million in fines. A minimum of 10% of DOT funding must be spent on DBE contracting. OIG says the most common DBE schemes involve “false front” firms, pass-through or conduit companies and false eligibility. “There is out-right fraud in surface transportation contracts and there are problems with airport concessions,” says David Barnes, OIG spokesman. ■

by William J. Angelo

FOR IMMEDIATE RELEASE
TUESDAY, JANUARY 13, 2004
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Department of Justice

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TUESDAY, JANUARY 13, 2004
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FOUR WISCONSIN ROAD CONSTRUCTION EXECUTIVES ARRESTED ON BID RIGGING AND WIRE FRAUD CHARGES

Road Construction Projects Worth More Than \$100 Million To State Of Wisconsin

WASHINGTON, D.C.-- Four Wisconsin road construction executives were arrested today on bid rigging and wire fraud charges for participating in a conspiracy involving projects let by the State of Wisconsin's Department of Transportation (WisDOT) and others, the Department of Justice announced. The road construction projects, which included public road, highway, bridge, street, and airport construction projects, were worth more than \$100 million to the State of Wisconsin.

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Department of Transportation
Office of Inspector General
September 27, 2004

OIG Item Details

Page 1 of 1

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Office of Inspector General

Item: Second Concrete Construction Company and Owners Plead Guilty to Bid-Rigging on Contracts of about \$100 million

Date: September 27, 2004

Type: Investigation

Summary: The Vinton Construction Company (Vinton), Manitowoc, WI, and owners, James and Michael Maples, plead guilty before a U.S. District Court judge in Green Bay, WI to charges of bid-rigging on approximately \$100 million in federally-funded highway contracts from about 1997 until January 13, 2004. A suspension issued in January 2004 for Vinton remains in effect, and sentencing has been set for December 22, 2004. Another firm, Streu Construction Co. and its owners were also charged in this matter, and plead guilty on September 20, 2004. This is one of the largest DOT fraud cases in Wisconsin. The investigation is being conducted jointly with the FBI and U.S. Attorney's Office for the Eastern District of WI, with assistance from FHWA.

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Thursday, March 4, 2004

Page 1 of 2

Thursday, March 4, 2004 6:32AM EST

Staggering under high bids for road work, the state Board of Transportation is urging the U.S. Department of Justice to review whether a major contractor has built a monopoly.

Affiliates of XXXXX, known as XXXX, dominate the repaving market. Last year, they claimed about \$70 million, nearly 40 percent of the department's spending on statewide resurfacing contracts. And on some projects, XXXX has been the only bidder.

XXXX is only one of DOT's concerns about high costs, which are forcing the board to reject many more bids than usual and are threatening to delay projects.

Even though the lowest bid for a section of Wake County's Outer Loop came in 20 percent higher than DOT wanted to pay, the board is set to approve the contract today.

DOT needs to increase competition because higher prices will mean it can't afford all the promised road projects, said Ty Cox, a board member from Durham.

"Unless you can get three people, or three contractors, to compete on every project," Cox said, "you're going to pay more than you need to pay."

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4/2004

National Fraud Awareness Conference
June 7 – 10, 2004

Fairmont Olympic Hotel
Seattle, Washington

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NATIONAL FRAUD AWARENESS CONFERENCE

SURFACE TRANSPORTATION AND CONSTRUCTION FRAUD

Brian Sonntag, State Auditor, Washington State Department of Transportation
American Public Transportation Association - TBA

- NY Disadvantaged Business Enterprise Fraud: A Task Force Approach
- False Claims Act & Fraud Schemes
- Disadvantaged Business Enterprise Fraud Panel
- “Standard Industry vs. Commercially Useful Function, Fact or Fiction?”
- Antitrust Enforcements in Highway Construction

What You Need to Know—Suspension & Debarment

49 CFR Part 29

Sec. 29.115 Policy.

(a) . . . to protect public interest, it is the policy of the Federal Government to conduct business only with responsible persons.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment.



What You Need to Know—Suspension & Debarment

49 CFR Part 29

Sec. 29.400 General.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in Sec. 29.405, and

(2) Immediate action is necessary to protect the public interest.



What You Need to Know

What We Will Cover Today

- Anti Trust
- DBE Fraud
- False Claims

What You Need to Know – Anti Trust Law

Single Most Dangerous Area

- Relationship with competitors
- Need to know what is
 - Forbidden
 - Permitted
 - Gray



What You Need to Know – Anti Trust Law

Sherman Act

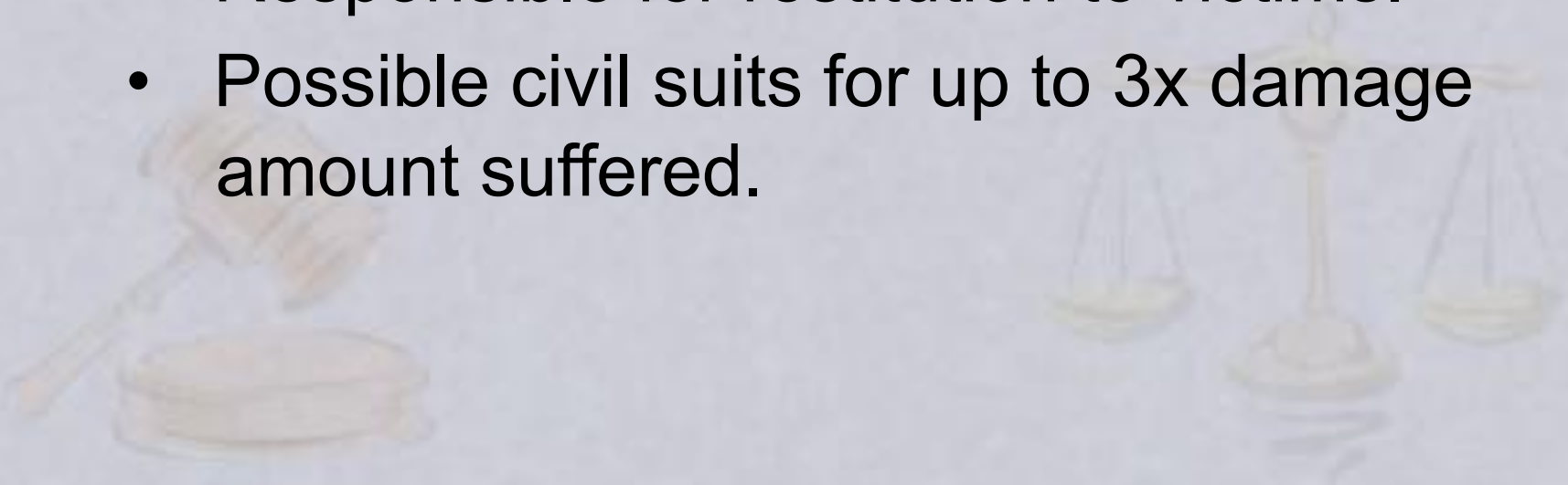
- The Sherman Act, prohibits any agreement among competitors to fix prices, rig bids, or engage in other anticompetitive activity.
- The Antitrust Division of Department of Justice (DOJ) is responsible for criminal enforcement.



What You Need to Know – Anti Trust Law

Sherman Act Penalties

- Fine up to \$10,000,000 for corporations.
- Fine up to \$350,000 and/or 3 years in prison for individuals.
- Responsible for restitution to victims.
- Possible civil suits for up to 3x damage amount suffered.



What You Need to Know – Anti Trust Law

The Sherman Act

- Any agreement
 - Does not need to be written or formal
 - Can just be an understanding
 - Conscious commitment



Is This Bid Rigging?

Case Study 1

Contractor A and Contractor B are having a casual conversation. Contractor A says, “I have so much work I don’t plan to bid for the next 6 months.” He does not. Afterwards, without saying anything, Contractor B does not bid for the next 6 months.

Is This Bid Rigging?

Case Study 2

A bridge and paving project is put out for bid. There are grading items and paving items on the project, but those are relatively insignificant. Contractor B, a paving contractor, submits a bid which is higher than Contractor A, a bridge builder and the only other bidder. Contractor A subcontracts the paving to Contractor B.

Is This Bid Rigging?

Case Study 3

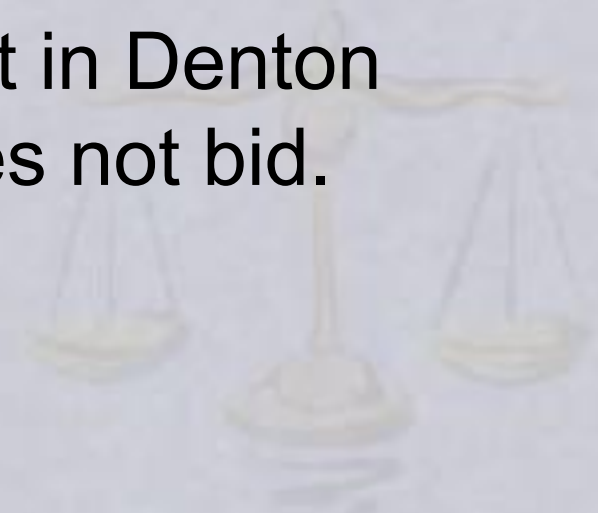
Supplier calls Contractor A to provide a price for steel. Supplier asks Contractor A if it's price is competitive. Contractor A asks supplier who he thinks are the "serious bidders."



Is This Bid Rigging?

Case Study 4

Contractor A decides it cannot compete with Contractor B for projects in Denton County. As a result, each time Contractor B pulls plans for a project in Denton County, Contractor A does not bid.



Is This Bid Rigging?

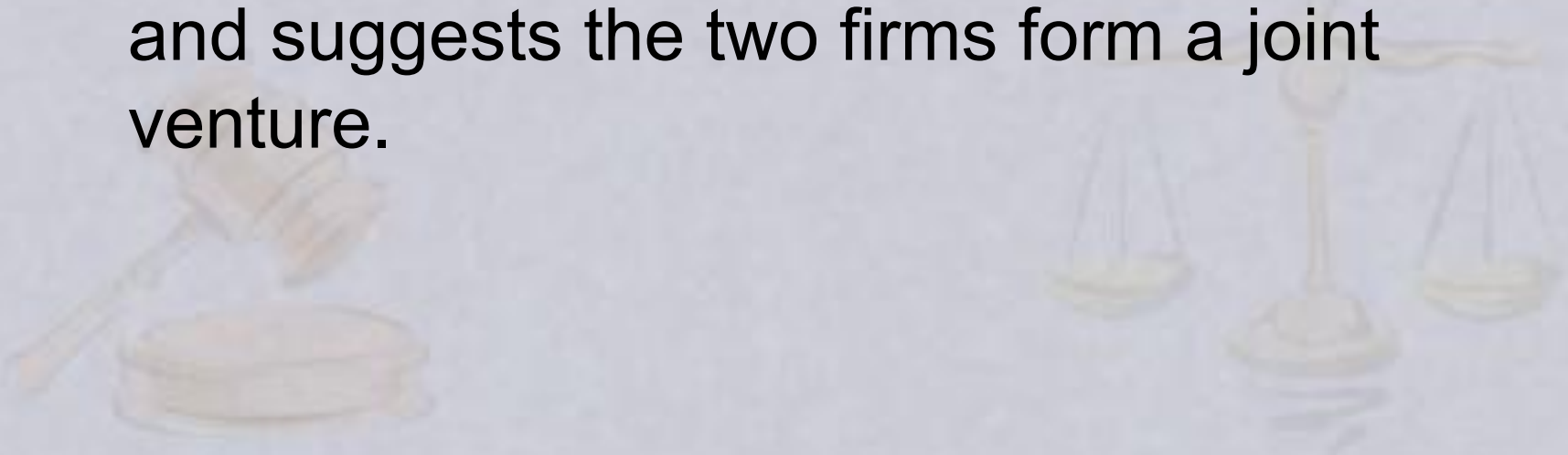
Case Study 5

Contractor A is low bidder on a project. Contractors B, C and D are the second through fourth bidders. As a result of being 15% higher than the engineer's estimates, all bids are rejected. After a revised upward estimate the project is re-bid. Contractor A raises it's bid to be just below Contractor B's first bid. Contractor B bids the same amount as before. Contractor C bids the same amount as before.

Is This Bid Rigging?

Case Study 6

Contractor A and Contractor B are both considering bidding on a \$100 million project. Contractor A contacts Contractor B and suggests the two firms form a joint venture.



Is This Bid Rigging?

Case Study 7

Contractor A is a very large asphalt paving contractor and owns plants in the eastern part of the state. Over the past year it has Done 90% of the work in that part of the state. Contractor B acquires several asphalt paving companies in the western part of the state. It begins to dominate the market there. Contractor A, which had been bidding in the western part of the state withdraws from that market. Contractor B never bids in the eastern part of the state.

What You Need to Know – Anti Trust Law

What is Collusion ?

- Collusion is an illegal, secret agreement between two or more parties for a fraudulent or wrongful purpose.



What You Need to Know – Anti Trust Law

Price Fixing

- Price Fixing is an agreement among competitors to raise, fix, or otherwise maintain prices.
- Does not mean competitors agree to charge same price.
- Not all competitors have to be part of conspiracy.



What You Need to Know – Anti Trust Law

Bid Rigging

- Bid Rigging occurs when conspiring competitors agree in advance who will win contract bid



What You Need to Know – Anti Trust Law

Bid Rigging

- Bid Rigging activities
 - Bid Suppression
 - Complementary Bidding
 - Bid Rotation
 - Subcontracting



What You Need to Know – Anti Trust Law

Bid Suppression

- One or more contractors, expected to bid, refrain from bidding or withdraw previously submitted bid so another contractor's bid will be accepted.



What You Need to Know – Anti Trust Law

Complementary Bidding

- A predetermined winning bidder with competing bids that are too high or violate special contract terms.



What You Need to Know – Anti Trust Law

Bid Rotation

- Conspirators take turns being low bidder



What You Need to Know – Anti Trust Law

Subcontracting

- Low bidder awards subcontracts to competitors in exchange for not submitting winning bid.



What You Need to Know – Anti Trust Law

Market Division

- When contractors allocate certain geographic territories amongst themselves.



What You Need to Know – Anti Trust Law

Information Exchange

- Very high risk to talk about price or bids
- Best Course: Avoid contact with competitors about bidding
- Question: Is it okay to find out what competitors are doing from subcontractors quoting?



What You Need to Know – Anti Trust Law

Joint Ventures

- A concern because opportunity to discuss and collude
- Need to show why joint venture rather than single contractor
 - Risk
 - Bonding capacity
 - Resources



What You Need to Know – Anti Trust Law

FHWA List

- Qualified Bidders Fail To Bid
- Contractors Repeatedly Bid Against One Another Or Do Not Bid Against One Another
- Successful Bidder Repeatedly Subcontracts Work To Higher Bidders
- Different Contractors Specialize In Federal, State, Or Local Jobs Exclusively
- Unusual Disparity In Front-end Or Lump Sum Payment
- Contractor Always Winning In A Certain Geographical Area



What You Need to Know – Anti Trust Law

FHWA List

- Contractors Bid Frequently, But Never Win
- Identical Bid Amounts On A Contract Line Item By Two Or More Contractors
- Contractors Convicted Of Bid Rigging In Other States Operating In Different State
- Joint Venture Bids Where Either Contractor Could Have Bid As A Prime
- Identical Ranking Bidders Upon Re-bidding
- Unit Prices Different In Same Letting On P Projects



What You Need to Know - DBE Programz

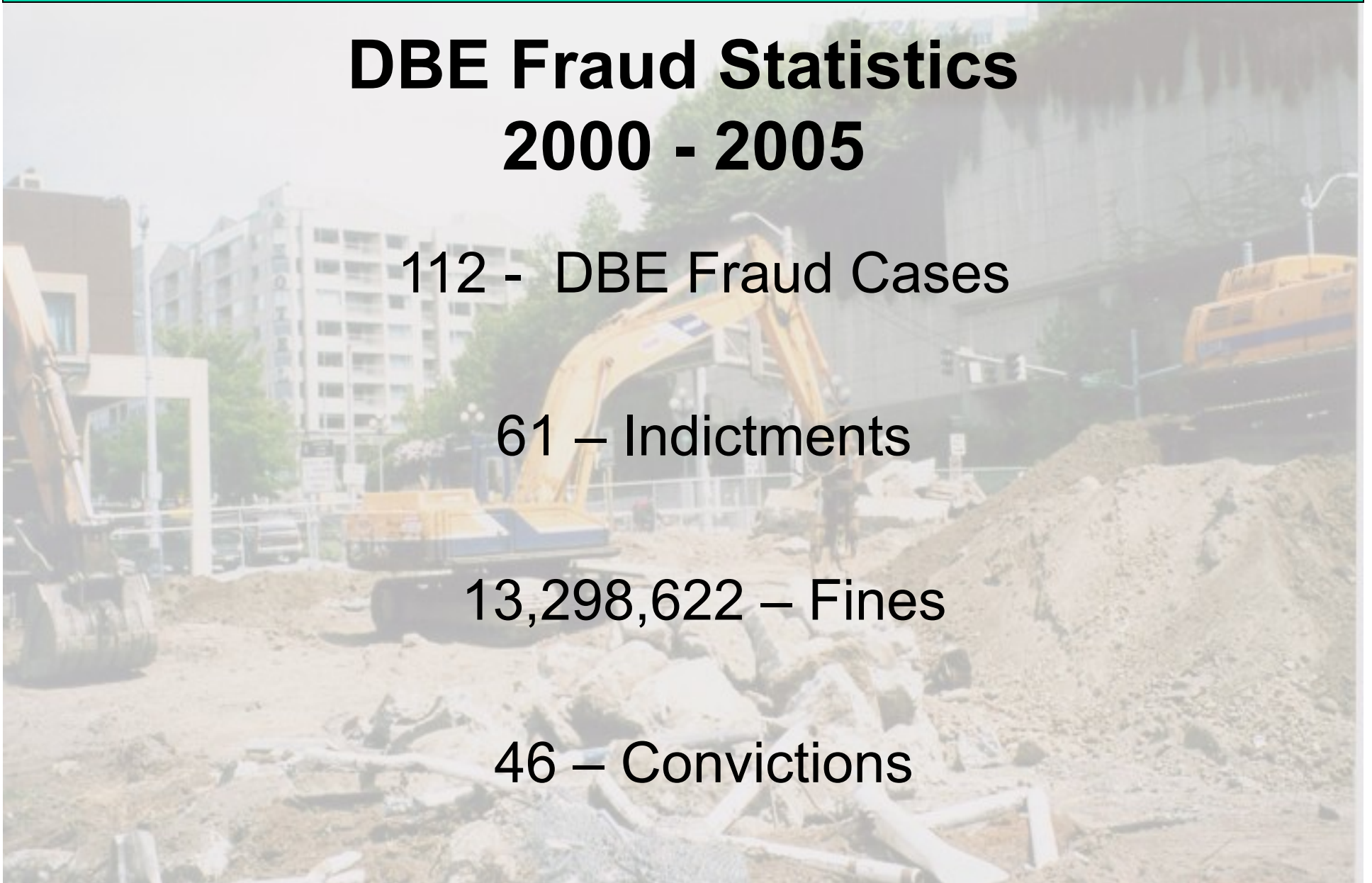
DBE Fraud Statistics 2000 - 2005

112 - DBE Fraud Cases

61 – Indictments

13,298,622 – Fines

46 – Convictions



What You Need to Know - DBE Program

Types of DBE Fraud

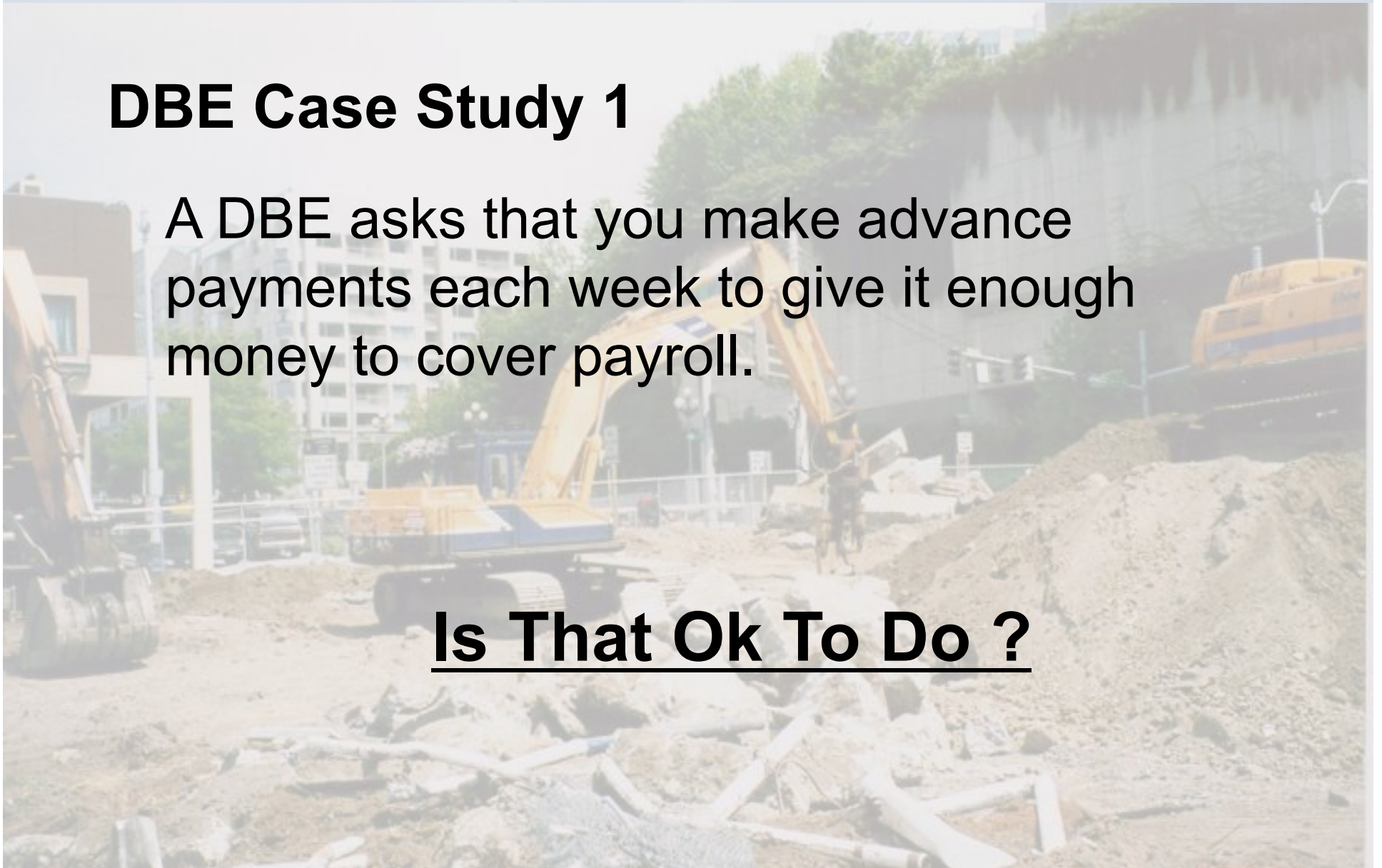
- Front or Sham DBEs – False representation of ownership or control
- Pass-Through or Conduit DBEs – Prime contractor represents DBE performed work it did not perform
- False Eligibility – False representation of eligibility to be DBE

Is This Permissible ?

DBE Case Study 1

A DBE asks that you make advance payments each week to give it enough money to cover payroll.

Is That Ok To Do ?



Is This Permissible ?

DBE Case Study 2

A DBE is certified by the state DOT as a regular dealer. During construction you call the DBE and ask that the goods be delivered to the job site. When the goods arrived you notice they have been shipped in trucks owned by the manufacturer which is not a DBE. The Bill of Lading shows the goods have been sold to the DBE regular dealer, but delivered to your job site.

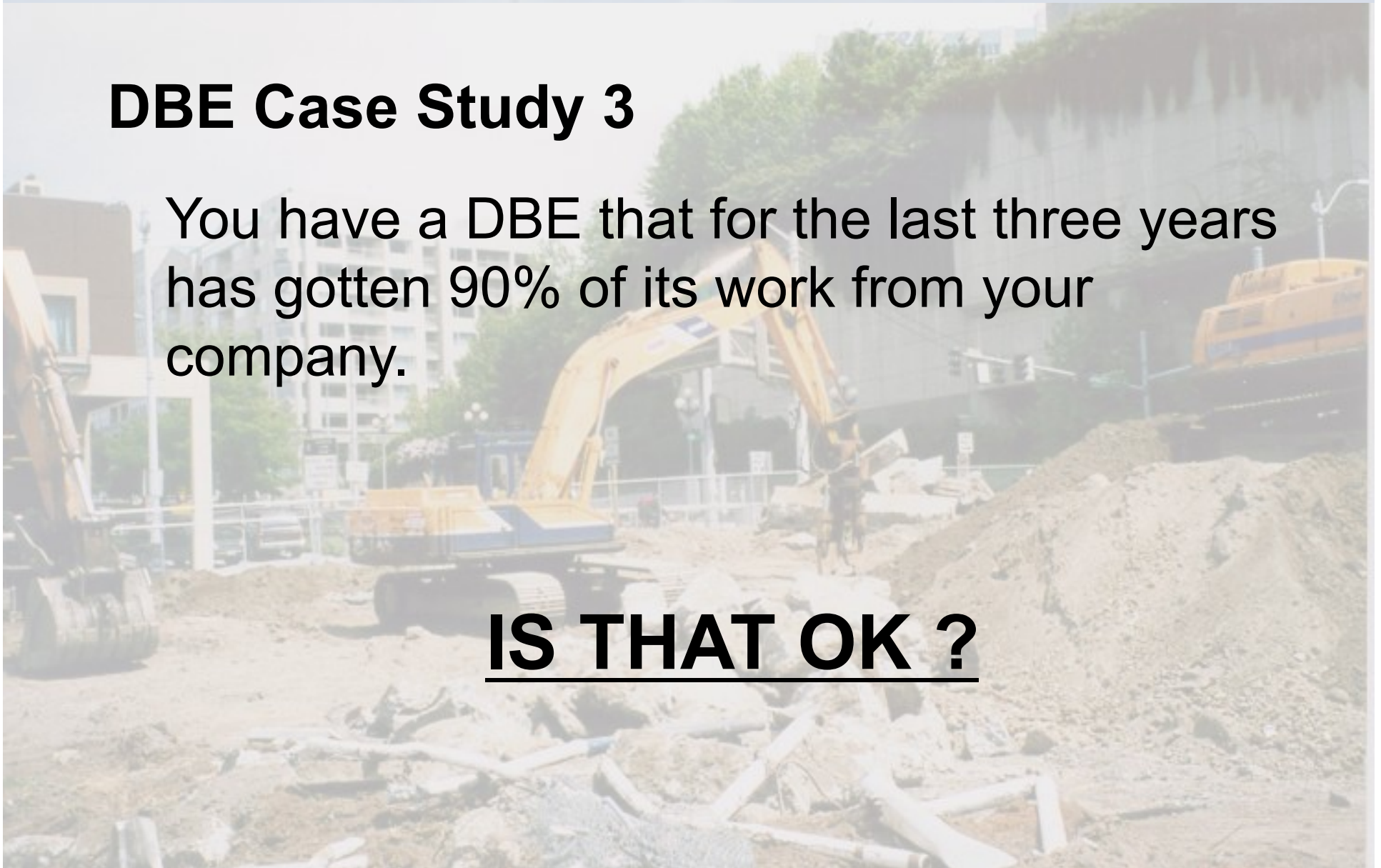
Are You Entitled To DBE Credit For The Goods ?

Is This Permissible ?

DBE Case Study 3

You have a DBE that for the last three years has gotten 90% of its work from your company.

IS THAT OK ?



Is This Permissible ?

DBE Case Study 4

DBE subcontractor to furnish and install structured steel. You receive quotes from structural steel suppliers, and give the DBE steel erector the price and a form purchase order to use.

IS THAT OK ?

Is This Permissible ?

DBE Case Study 5

The DBE has a subcontract to furnish and install structural steel. Your superintendent calls the steel supplier to arrange for delivery of the steel.

IS THIS OK ?

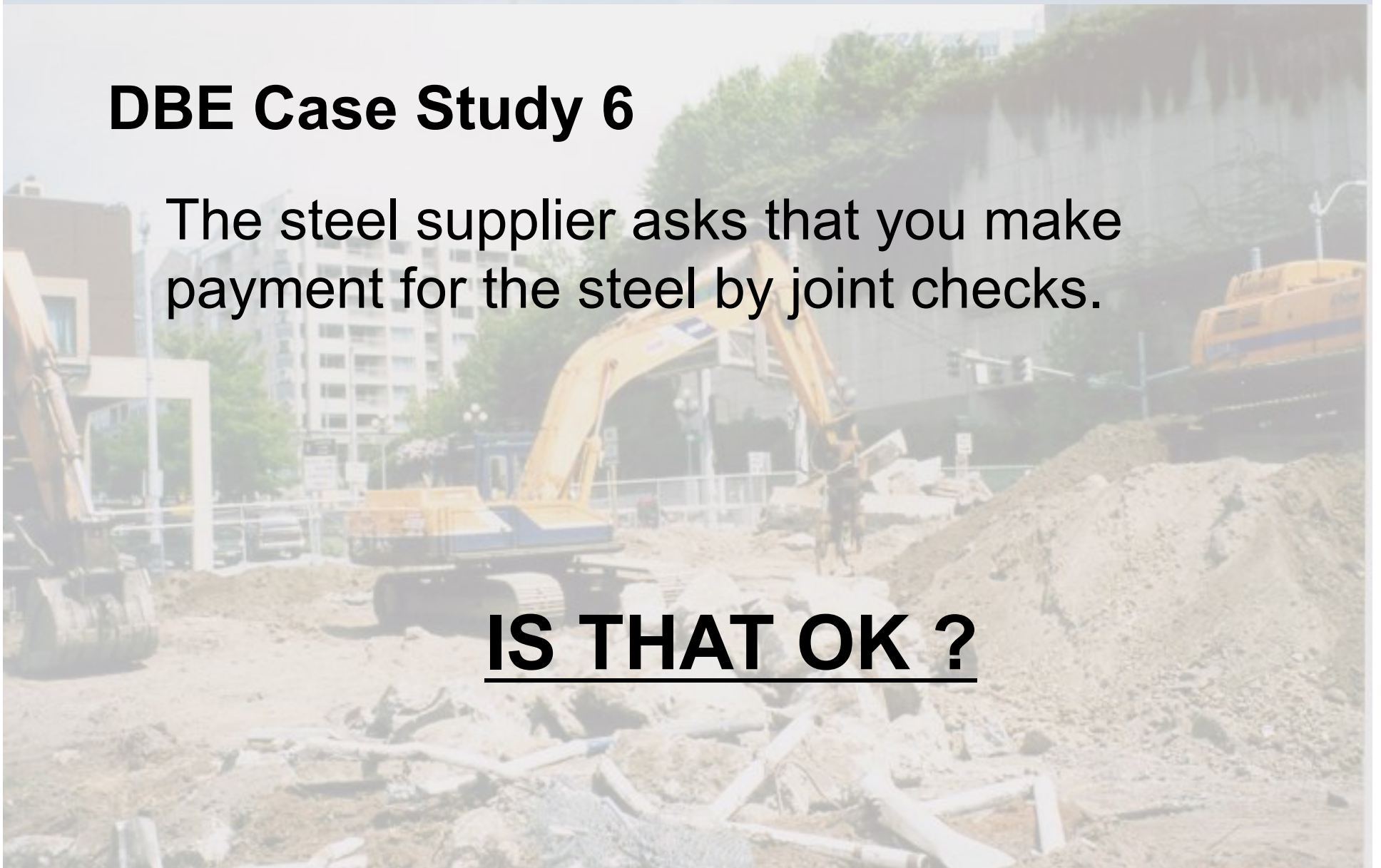
**IS IT OK FOR YOUR CRANE AND CRANE
OPERATOR TO UNLOAD THE STEEL OFF
THE TRUCKS ?**

Is This Permissible ?

DBE Case Study 6

The steel supplier asks that you make payment for the steel by joint checks.

IS THAT OK ?



Is This Permissible ?

DBE Case Study 8

Is It Permissible For Your Company To
Sell Materials To A DBE Firm Working
On One Of Your Projects ?

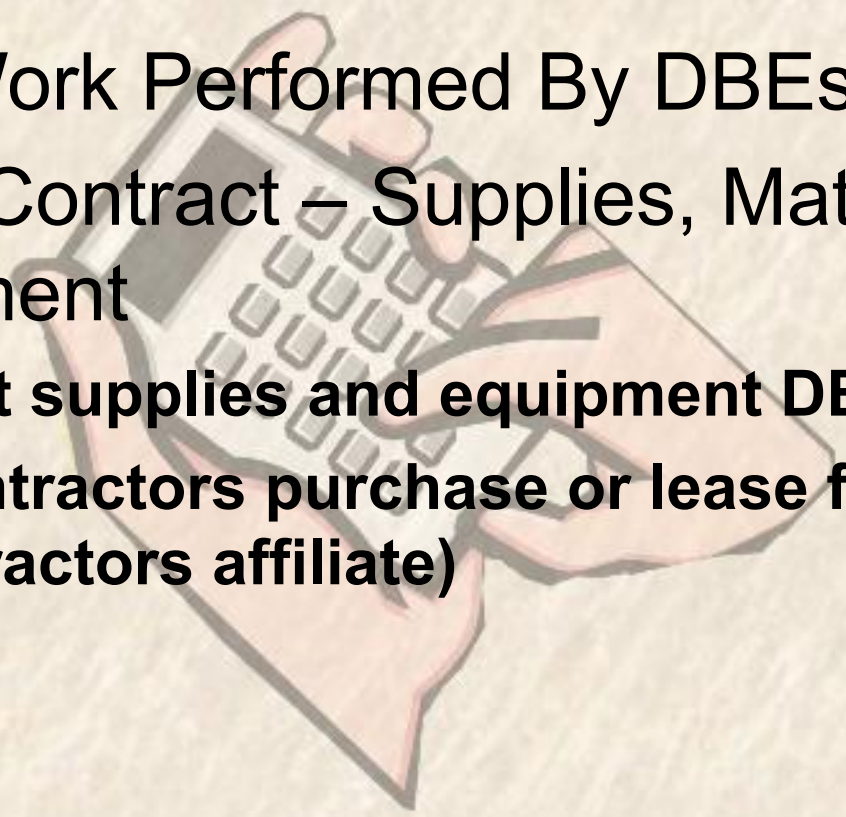
If It Is Permissible, Do You Need To
Reduce The DBE Credit Claimed By
The Cost Of The Materials ?

What You Need to Know - DBE Program

DBE Credit

26.55 Counting

- Only Work Performed By DBEs
- Entire Contract – Supplies, Materials, Equipment
(Except supplies and equipment DBE subcontractors purchase or lease from Prime contractors affiliate)



What You Need to Know - DBE Program

DBE Credit

26.55 Counting

- Commercially Useful Function (CUF)
Responsible for execution of work and carrying out responsibilities by:
 - Performing, managing and supervising work



What You Need to Know - DBE Program

DBE Credit

26.55 Counting

- Commercially Useful Function (CUF)
Responsible for execution of work and carrying out responsibilities by:
 - For materials:
 - Negotiating price
 - Determining quality and quantity
 - Ordering the material
 - Installation
 - Paying for material

What You Need to Know - DBE Program

DBE Credit

26.55 Counting

- Trucking Guidance on CUF
 - Responsible for management and supervision of all trucking
 - Must own and operate at least one fully licensed, insured, and operational truck
 - May lease trucks from another DBE firm

What You Need to Know - DBE Program

DBE Credit

26.55 Counting

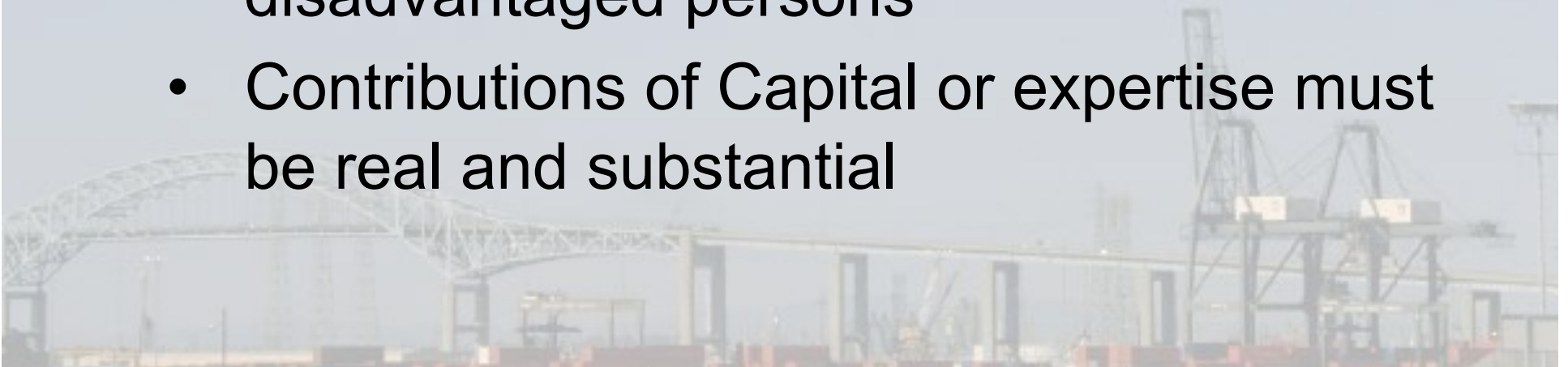
- Material Suppliers
- Manufacturer
 - Count 100 percent of the materials or supplies toward DBE goals
- Regular Dealer
 - Count 60 percent of the materials or supplies toward DBE goals

What You Need to Know - DBE Program

DBE Eligibility

26.69 Ownership

- At least 51% owned
- Ownership must be real, substantial and continuing
- Securities are held directly by disadvantaged persons
- Contributions of Capital or expertise must be real and substantial

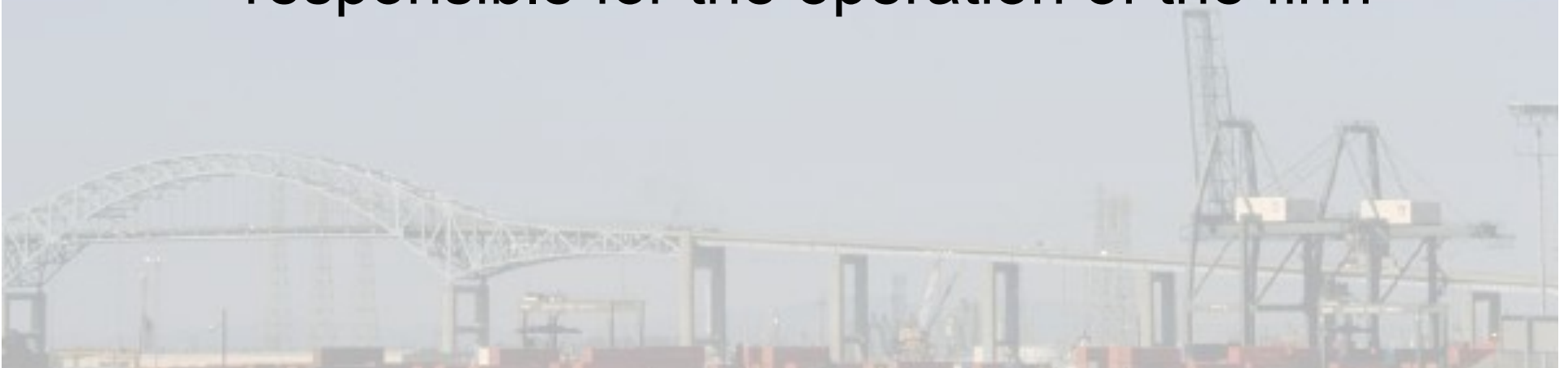


What You Need to Know - DBE Program

DBE Eligibility

26.71 Control

- Must be independent
- Must possess the power to direct management decisions
- Non-DBE can not be disproportionately responsible for the operation of the firm



Problems with the DBE Regulations

Independence and Control §26.71

Counting DBE Participation §26.55

Problems with the DBE Regulations

Independence and control §26.71

(b)(1) In determining . . . DBE is an independent business, . . . “scrutinize” relationships with non-DBE non-DBE firms, in . . . Personnel, facilities, equipment financial and/or bonding support, and other resources.

§26.71

such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial

49 CFR Subtitle A (10-1-99 Edition)

by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of direc-

partnership, one or more disadvantaged owners must serve as general partners, with control over all major decisions.

Individuals who are not socially and economically disadvantaged may be employed in a DBE firm as owners, employees, stockholders, officers and/or directors. Such individuals do not, however, possess or exercise power to control the firm, or are not proportionately responsible for the operation of the firm.

Disadvantaged owners of the firm may delegate various areas of the management, policy-making, or daily operation of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be reviewed by the socially and economically disadvantaged owners must retain the power to hire and fire any person from whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the

voting powers attached to different classes of stock, employment contracts, requirements for concurrence

Problems with the DBE Regulations

Compare independence
with Good Faith Efforts

Pt. 26. App. A

Prime contractors are
directed to:

F. Make efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance . . .

G. Make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

Pt. 26, App. B

associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

to indirectly using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

49 CFR Subtitle A (10-1-03 Edition)

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

APPENDIX B TO PART 26—UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS FORM

Problems with the DBE Regulations

Independence and control §26.71

(b)(2) You must consider whether present or recent employer/employee relationships . . .
Compromise the independence of the potential DBE firm.

§26.71

such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other re-

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

49 CFR Subtitle A (10-1-99 Edition)

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(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals

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socially and economically disadvantaged owners of the firm may deliberate in areas of the management, policymaking, or daily operation of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such areas of authority must be reviewed to ensure that the socially and economically disadvantaged owners must retain the power to hire and fire any person from whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the

Problems with the DBE Regulations

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(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive

49 CFR Subtitle A (10-1-99 Edition)

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(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the firm.

If economically disadvantaged owners of the firm may delegate the management, or daily operations, or other participants in the management of whether these socially and economically disadvantaged individuals. Such delegation must be revocable and economically disadvantaged owners must retain the authority to fire any person whose authority is deleterious to the overall role of the socially disadvantaged firm's overall affairs. The recipient of the delegation must ensure that the socially disadvantaged owners maintain control over the

(b)(3) You must examine the firm's relationships with prime contractors to determine whether . . . exclusive or primary dealings . . . compromises the independence

Problems with the DBE Regulations

Independence and control §26.71

(b)(4) In considering factors related to the independence . . . must consider the consistency of relationships . . . with normal industry practice.

§26.71

such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to

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by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the manage-

ment to daily operator participants. Whether these participants are socially and economically disadvantaged individuals, such participants must be reviewed and economic interests must not be sacrificed. No person whose primary responsibility is the operation of the firm may be a disadvantaged owner. The disadvantaged owner must be the recipient of the benefits of the disadvantaged ownership and must have control over the

Problems with the DBE Regulations

Independence and control §26.71

(m) In determining . . . may consider whether the firm owns equipment necessary to perform its work.

§26.73

family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work.

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advantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership to contract

and economically disadvantaged individuals controlling a employee leasing company does not control the company if they continue to employ ever-employee released employees. responsible for hiring, assigning, and the on-the-job employees, as well as for wage and to the employ-

rules affecting

of whether a firm is commercially useful functional dealer pertains solely to counting toward DBE goals

cation, but you must verify the dis-

Problems with the DBE Regulations

Independence and control §26.71

(m) . . . must not determine . . . firm is not controlled . . . solely because the firm leases, . . . equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

§26.73

family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

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advantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee

work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the dis-

(a)(l) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals

Is This A False Claim ?

Case Study 1 - False Claims

Contractor A submits a claim for \$1 million, knowing that its increased cost is approximately \$500,000 and expecting the DOT to pay 1/2 the amount claimed.



What You Need to Know - False Claims

What Public Owners look for:

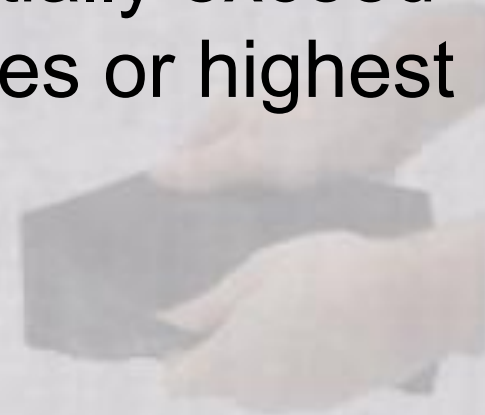
- Overstatements and/or mischarges of labor hours, equipment costs, and cost duplication (double dipping)
- Costs charged to project that should be charged to another project or overhead



What You Need to Know - False Claims

What Public Owners Look For:

- Intentional under estimating or bidding by contractor to receive contract
 - Consistent cost overruns on highway construction project
 - Cost overruns substantially exceed original project estimates or highest bidder



What You Need to Know - False Claims

What Public Owners look for:

- Unallowable costs included in overhead
- Improper cost allocations, and cost statements that are not current

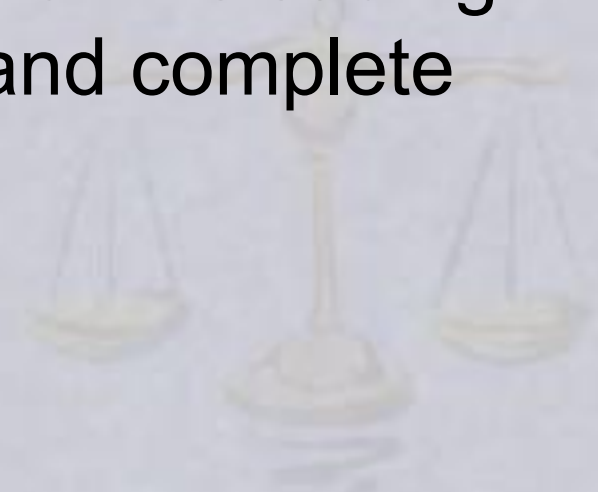


What You Need to Do - False Claims

Responsibility

If preparing or certifying claim, assure that:

- You are entitled under contract or law
- The claim information is correct
- The claim information is not misleading and is current, accurate and complete



What You Need to Do - False Claims

Costs

- Describe source documents from which costs were obtained and how costs were calculated
- When asked to forward price change orders, support amounts requested with cost data on similar work from prior projects

What You Need to Do - False Claims

Costs

- Segregate costs claimed from costs incurred to perform the original contract work
- Make certain costs have been properly charged to cost code
- Be able to reconcile claim costs to cost report, and cost report to daily report; daily report to timecard and foreman diary if applicable

What You Need to Do - False Claims

Costs

- Make sure costs claimed are allowable under the cost principles and are reasonable
- Avoid changing original entry documents. If changes are made, explain why (e.g., cost codes on time cards)

What You Need to Do - False Claims

Costs

- Check mathematical calculations
- Avoid duplication. Identify when same item is included in two separate claim items and explain why.

What You Need to Do to Protect Your Company

Compliance Program

- Manuals
- Training
- Monitoring

<i>DBE CONTRACTING PROCEDURES MANUAL</i>	
ABC CONSTRUCTION CO.	
DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACTING PROCEDURES MANUAL	
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III. ESTIMATING AND BIDDING	3
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What You Need to Do to Protect Your Company

Why ?

- Compliance Programs
 - Designed to avoid problems
 - May avoid most serious consequences when mistakes are made

What You Need to Do to Protect Your Company

What Areas ?

- General Business Conduct
- Claims
- Antitrust
- Safety/OSHA
- DBE
- Conflicts of Interest
- Environmental

Conclusion

- Fraud is a big concern of USDOT/FHWA
- It can put your company out of business
- Compliance programs including training is key to avoiding problems



National Asphalt Pavement Association

Ethics And Integrity In The Post Enron Era

Cordell M. Parvin
The Parvin Law Firm