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Disadvantaged Business Enterprise (DBE) Commercially Useful Function (CUF) Determination

Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF 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 DBE participation..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.

ITD district staff will perform CUF reviews on DBEs. A minimum of one CUF review must be performed for each DBE on each project with or without a DBE goal. With the assistance of the DBE Program Coordinator, a CUF review should be completed for each DBE by the district. The CUF review should be submitted with all supporting documentation (invoices, payroll, pictures, equipment, DWR and list of employees). The district will upload the completed CUF form into B2Gnow and in ProjectWise. A CUF review must be conducted to assess performance and compliance should be monitored throughout the course of the project. The following questions on this form should be answered by the DBE Owner or DBE Superintendent but **only ITD personnel can fill out this form. DBE's must not fill out any portion of the form.**

A **minimum of one CUF review** must be performed **for each DBE** on each federal-aid project **with or without a DBE goal**. The review should be conducted when the **DBE first begins work**, and compliance should be monitored throughout the course of the project. All questions marked with a * next to the question can be done by the district office staff (RE, DCOM, DRI). Sections marked "Haulers", "Manufacturer" or "Regular Dealer/Supplier" are only required if that is what the DBE firm is performing as.

Key #:	District:	Project Name:	
Prime Contractor:		Prime Contractor Contact:	
DBE Firm:			
DBE Firm Owner:		DBE Firm Email:	
DBE Firm Address:			
Date Contract Signed:	Start Date of DBE's Work:	Date DBE to Complete Work:	Date of Review:

DBE Scope of Work

DBE Firm is Performing as:

Prime Contractor Subcontractor Haulers Manufacturer Regular Dealer/Supplier Lower-Tier Subcontractor

Provide a brief description of the DBE's scope of work (obtain copy of subcontract agreement and/or purchase order if needed):

Management

Is there a supervisor on site?

Yes No N/A

Does the Supervisor effectively manage the job without interference from any other non-DBE contractor?

Yes No N/A

Has the DBE owner been present on the jobsite?

Yes No N/A

Who is scheduling work activities, material deliveries and other requirements for the DBE's work? (Include name and titles below.)

Did the DBE subcontract any items or portions of the work to any other firm?

Yes No N/A

If yes, what percentage was subcontracted?

Name of the firm doing subcontracted work:

Is the subcontractor a DBE?

Yes No N/A

*Is the DBE maintaining its own payroll?

Yes No N/A

Equipment

Does the equipment have the DBE's markings or emblems? (*Attach photos showing markings or emblems.*)

Yes No N/A

If another firm's markings are present, identify the name of the firm:

Is the equipment and/or operator under the direct supervision of the DBE?

Yes No N/A

Is the operator of the leased equipment the DBE's employee? (*Use of the prime's equipment in an emergency is allowed, but the cost associated with the use of the equipment cannot be credited toward the goal.*)

Yes No N/A

*Is the equipment owned or leased? (*Attach equipment list, ownership documents, and rental and lease agreements for equipment being used on the project.*)

Yes No N/A

*If leased, who is it leased from?

Workforce

Does the DBE crew know which company they work for?

Yes No N/A

Attach a list with the names and titles of the DBE's crew present during the review.

*Have copies of certified payrolls been obtained for verification? (*Attach copies of certified payrolls.*)

Yes No N/A

Materials
Is the DBE contracted to furnish and install a contract item? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Who makes the arrangements for the delivery of materials?
Who schedules the delivery of materials?
*Are joint checks being used? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
*Who are the parties identified as payable to?
*Who are the material invoices made out to? (<i>Obtain and attach copies of invoices, material on hand documents, cancelled checks.</i>)
*In whose name are the materials shipped to? (<i>Obtain and attach copies of shipping documents, bills of landing, etc.</i>)

Performance
Does the DBE appear to have control over methods of work on its contract items? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Has any other contractor performed any amount of work specified in the DBE subcontract? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
If yes, did the contractor have ITD's prior written approval before self-performing the work? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Is the DBE performing at least 30% of the work? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Haulers
Do haul tickets indicate work is performed by a DBE? (<i>Attach copies of haul tickets.</i>) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Do the trucks on the work site belong to the DBE? (<i>Obtain and attach verification of truck ownership in the name of the DBE.</i>) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
*If leased, are the agreement terms in compliance with DBE requirements? (<i>Obtain and attach copies of lease agreement.</i>) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

Manufactures (<i>Count 100% of the cost of materials/supplies/articles produced.</i>)
Were the actual products provided by the DBE the same (type and quantity) as those described in the prime's commitment, purchase order, or the DBE's subcontract? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
If no, reevaluate if DBE firm is a supplier.
Do shipping documents, material certifications, or other information indicate that the final products were manufactured (blended, modified, fabricated, etc.) at a facility maintained or operated by the DBE? (<i>Obtain and attach copies of documents reviewed.</i>) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
If yes, count 100% of the materials/supplies/articles purchased by the prime.
If no, DBE is not acting as a manufacturer. Count only fees and commissions and provide comments below.

Regular Dealers/Suppliers *(Count 60% of the cost of materials or supplies purchased/leased.)*

Were the actual products provided by the DBE the same (type and quantity) as those described in the prime's commitment, purchase order, or the DBE's subcontract?
 Yes No N/A

Does the DBE have an establishment where the products, or those of the general character described by the specifications and required under the contract are kept and regularly sold/leased?
 Yes No N/A

If no, did the DBE firm have physical possession of the products prior to delivery? *(Obtain and attach copies of delivery/shipping documents that show the product origin and name of delivery agent/company or operator's name or employee.)*

Yes No N/A

Are the products considered bulk items or specialty items not typically stocked?

Yes No N/A

If no, the DBE is not acting as a regular dealer, count only fees and commissions towards goal

Did the DBE own (or have a long-term lease) and operate the distribution equipment used to deliver the products? *(Obtain and attach copies of delivery/shipping documents.)*

Yes No N/A

If no, the DBE is not acting as a regular dealer, count only fees and commissions towards goal

Did the DBE own the products sold or leased? *(Obtain and attach copies of delivery/shipping documents.)*

Yes No N/A

If no, the DBE is not acting as a regular dealer, count only fees and commissions towards goal

Commensurate

*Is payment received by the DBE firm commensurate for the work being performed?

Yes No

Comments

Large empty text area for comments.

Commercially Useful Function Determination

Based on the above, is the DBE an independent business, executing a distinct element of work, and actually performing, managing, and supervising the work specified in the DBE's contract?

Yes No

If no, proceed to the "Non-Commercially Useful Function Determination."

Date of Review:

Signatures and dates below must be included prior to submission.

Reviewer Signature:		Date:
Printed Name:	Job Title:	

Resident Engineer or Second Reviewer Signature:		Date:
Printed Name:	Job Title:	

Non-Commercially Useful Function Determination

If a CUF is not being performed by the DBE subcontractor, what action was taken to correct the deficiency?

Did the action taken correct the deficiency?

Yes No

If needs be, include the DBE Program Coordinator in the discussion.

Date of Review:

Date of Correction:

Signatures and dates below must be included prior to submission.

Reviewer Signature:

Date:

Printed Name:

Job Title:

Resident Engineer or Second Reviewer Signature:

Date:

Printed Name:

Job Title:

DBE Program Coordinator Signature: (if needed)

Printed Name:

Date:

CUF Determinants

Management

- Scheduling work operations
- Preparing and submitting certified payrolls
- Full-time supervisor or superintendent

Red Flags

- The DBE owner or superintendent provides little or no supervision of the work
- The DBE's superintendent is not a regular employee of the firm
- The DBE owner is not aware of the status of the work

Records/Documents

- Subcontract Agreement or Purchase Order
- Daily inspection reports
- Certified payrolls

Equipment (Take photos where possible)

- The DBE owns, rents or leases equipment
- The DBE may lease specialized equipment with an operator
- The DBE provides the operator and is responsible for all labor and compliance for non-specialized equipment
- The DBE's sign or logo is on the equipment
- The DBE is utilizing its own equipment

Red Flags

- The DBE and prime share equipment
- Equipment signs and markings cover another contractor's identity
- DBE's name is not on the lease agreement

Records/Documents

- Invoices
- Haul tickets or Bills of Lading
- Lease agreement
- Ownership documents, e.g. title, registration, vehicle identification number (VIN)
- Cancelled checks

Materials

- The DBE is ordering materials, and invoices indicate the DBE is the customer
- The contact person is employed by the DBE
- The DBE is paying for the materials
- The use of joint checks have been approved

Red Flags

- Materials for the DBE are ordered, or paid for, by the prime contractor
- Invoices do not indicate the DBE is the customer
- The prime's employee and phone number is listed as the contact
- Materials come from the prime's stockpile or an affiliate of the prime

Records/Documents

- Invoices
- Material on Hand documents
- Delivery Tickets, Haul Tickets, Bills of Lading
- Joint Checks
- Cancelled Checks
- Subcontract Agreement

Performance/Workforce

- DBE must be responsible for performing its own work on the project
- At least 30% of the work must be performed by the DBE with its own workforce
- The DBE keeps a regular workforce and had its own employees

Red Flags

- A portion of the DBE's work being done by the Prime Contractor or jointly with another contractor
- Employees working for both the prime and the DBE
- Supervision of the DBE employees by another contractor
- The work is outside of the DBE's known experience or capability
- The DBE's work is self-performed by the prime or another contractor

Records/Documents

- Subcontract Agreement or Purchase Order
- DBE monthly progress reports
- Certified payrolls

DBE Trucking Firms

- The DBE is required to own and operate at least one fully licensed, insured and operational truck on the contract
- The DBE is allowed to lease trucks from DBEs and non-DBEs
- The DBE keeps a regular workforce and has its own employees
- The DBE is utilizing its own equipment
- Operation of the equipment must be subject to the full control of the DBE

Red Flags

- The DBE does not own any trucks used on the project
- DBE trucks are never at the job site (owned or leased)
- Large trucking commitment - compared to DBE capacity
- DBE does not own the right type of truck for the work
- No lease agreement present or trucks not owned by the DBE firm

Records/Documents

- Subcontract Agreement or Purchase Order
- Equipment ownership, rental, or lease documents
- Payroll records
- List of trucks and truck unit numbers and Vehicle Identification Numbers (VIN)

DBE Regular Dealers/Suppliers

- The DBE has a regular trade with a variety of customers
- The DBE has an inventory of the materials and/or supplies under the contract
- For bulk items, the DBE both owns and operates distribution equipment
- The use of joint checks has been approved by the department
- The DBE is responsible for the delivery

Red Flags

- The DBE supplies a product on an ad hoc basis in relation to a particular contract or contractor
- The DBE acts as the middleman in the transaction
- The DBE supplements the distribution equipment without having a long-term lease
- The DBE does not regularly sell the materials or supplies required under the contract
- Materials are drop-shipped from the commercial manufacturer
- The DBE's employees are not operating the leased distribution equipment
- All of the materials are special ordered
- The DBE does not inventory the material

Records/Documents

- Invoices
- Delivery tickets, Haul tickets or Bills of Lading
- Purchase order
- List of inventory
- Cancelled checks

DBE Manufacturers

- Maintain a factory or establishment that produces on the premises the materials or supplies required on the contract
- Alter or fabricate the product
- DBE is scheduling work operations

Red Flags

- Materials come from the prime's stockpile
- The DBE only orders the materials or supplies but does not alter the product
- The DBE does not have a factory, warehouse, or establishment to produce or alter the products

Records/Documents

- Purchase order
- Material sources
- Material invoices and billing invoices
- Bills of Lading, Shipping Tickets