



# DBE COMMERCIALLY USEFUL FUNCTION REPORT (for Federally Funded Projects Only)

ECMS Project Number	District	SR	Sec.
Prime Contractor:			
DBE Firm:		Date DBE began work	
Date CUF Review Conducted by District		Review type: <input type="checkbox"/> Initial <input type="checkbox"/> Follow-up	
Work type (e.g., Earthwork –Clearing and Grubbing)			

**\*\*Please note that not all questions apply to all work items. If the question is not applicable simply check 'N/A.'**

	YES	NO	N/A
1. Was the DBE firm that performed the work the same firm originally committed to in ECMS for this work item? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			
2. Were materials drop shipped? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, briefly explain _____			
3. Were materials delivered after hours? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, briefly explain _____			
4. If materials shipped to the project site by a third party, was lease agreement provided? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			
5. Did the DBE provide necessary paperwork (e.g., certifications, delivery tickets, permits, etc.) as required? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			
6. Did the DBE have a superintendent or other representative assigned to the project who was responsible for ensuring effective control of the work? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			
7. Did you observe the DBE firm using any equipment or tools that appeared to be the property of another company (e.g., magnetic signs, stamps, etc.)? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, briefly explain _____			
8. Was the DBE's work suspended, in whole or in part, because the firm failed to comply with specifications or with the provisions of the contract? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If yes, briefly explain _____			
9. Did the DBEs employees appear to be knowledgeable of the necessary construction methods related to this item of work? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			
10. Is the DBE self-performing work without assistance from the prime or another subcontractor? .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If no, briefly explain _____			

11. Based on your observations, did the DBE demonstrate that it was responsible for execution of the work of the contract and carried out its responsibilities by actually performing, managing, and supervising the work involved? .....

If no, explain in 'Comments' below:

**COMMENTS** (As appropriate, explain any steps taken to resolve any issue(s) identified above at the project level. Also, indicate whether resolution was achieved.)

\*(IF ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH A SEPARATE SHEET)

**Inspector-in-Charge Only**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Date

1. Did any work committed to the DBE get eliminated and if so, were appropriate adjustments made to the commitment in ECMS? .....

YES NO N/A

If no, briefly explain \_\_\_\_\_

2. If this DBE firm was a replacement, was the required documentation received? .....

If no, briefly explain \_\_\_\_\_

3. If a shortfall exists, describe any steps taken to avoid or minimize it.

Briefly explain \_\_\_\_\_

4. Based on your review of the above information, did the DBE demonstrate that it was responsible for execution of the work of the contract and carried out its responsibilities by actually performing, managing, and supervising the work involved? .....

If no, explain in 'Comments' below:

**COMMENTS**

**ACE (or designee) Only**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Date

**BEO Only**

Based on our review of this CUF Report:

Concur  Do not concur

Comment: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Phone Number

## GUIDANCE FOR COMPLETING THE CUF FORM

The guidance below is included to assist you in identifying situations that may indicate that a Disadvantaged Business Enterprise (DBE) is not performing a Commercially Useful Function (CUF) as required under Section 26.55 of Title 49 Code of Federal Regulations Part 26 (Part 26). Federal DBE regulations provide that a DBE is performing a CUF when it is responsible for execution of the work it committed to perform under a contract with the prime and is, in fact, carrying out its contractual responsibilities by performing, managing, and supervising the work. CUF is evaluated under the portion of Part 26 that indicates when DBE participation can be counted towards the project goal (that section is included as an attachment to this document). If it is determined that a DBE is not performing a CUF on some or all of the work subcontracted to them, the prime contractor will lose DBE credit.

### Things to remember:

Failure of a DBE to perform a CUF is significant. Please keep in mind the following:

1. A DBE firm's activity in relation to its contractual obligations does not end with the completion of one CUF form. Accordingly, it may be necessary to review a DBE's performance multiple times and file multiple CUF forms throughout the life of a project.
2. Every time a DBE performs a new or different item of work on the project, a new CUF form must be completed, e.g., furnish and install to supply only. Additionally, if a CUF form has not been completed for a DBE firm in the last twelve (12) months, then a new form must be completed.
3. A CUF form must be completed for all DBEs performing on any federally funded highway project, regardless if they are being used to meet the DBE project goal.
4. A DBE firm's performance should be reviewed in light of what it is contractually obligated to do. It is important to be familiar with the work the DBE has contractually committed to do. The identification of "red flags" during a review may not mean that a CUF issue exists. Accordingly, it is important to document what you observe for further evaluation.

A CUF form must be completed either on paper or through the PPCC. If your project has not been placed in the PPCC, please continue to maintain the completed CUF form(s) in the project field office files. As stated above, complete a new CUF form once in a twelve (12) month period, and anytime a DBE performs a new or different scope of work. This must be done regardless if the DBE is being used to meet the project goal or not. If all supporting documentation is not yet available, complete the form to the fullest extent possible, indicating in the 'Comments Box' any items that are still needed for review.

Once a CUF form has been completed, continue to monitor the DBE firm to ensure that Commercially Useful Function requirements are being met during the life of the project. When in doubt, contact the Bureau of Equal Opportunity (BEO) at 717-787-5891 or 1-800-468-4201 or via the email resource account: [penndotcuf@pa.gov](mailto:penndotcuf@pa.gov) for additional guidance and/or assistance.

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### Red Flags

Please note: There is no cookbook or exhaustive list of CUF situations, as each instance is fact-specific.

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The following are examples of some of the more common red flag occurrences:

### PERFORMANCE

#### RED FLAGS

- Employee(s) working for both the Prime and the DBE. (Note: This could be the result of union agreements and therefore must be examined closely.)
- Equipment used by DBE belongs to the Prime Contractor
- Equipment signs and markings cover another contractor's identity, with no formal lease agreement
- Equipment used by DBE belongs to another contractor with no formal lease agreement
- Equipment has another contractor's name on it
- All or a portion of the DBE's work is being done by the Prime Contractor or jointly with another contractor

#### RECORDS/DOCUMENTS

- Certified payrolls
- Equipment ownership, rental, or lease documents (recommend District require copy along with subcontract submittal)
- Subcontract Agreement or Purchase Order

### HAULING FIRMS

#### RED FLAGS

- Trucks used by DBE belong to the Prime Contractor.
- Trucks used by DBE belong to another contractor with no formal lease agreement
- Truck signs and markings conceal another contractor's identity
- Trucks have another contractor's name on them
- Operator(s) working for both the Prime and DBE
- Use of operator(s) for leased trucks is not specified in the lease agreement and operator(s) is not an/are not employee(s) of the DBE
- Haul tickets and/or bills of lading have a firm other than the DBE listed

#### RECORDS/DOCUMENTS

- Certified payrolls
- Truck ownership/vehicle registration, purchase orders, rental, or lease documents (recommend District require copy along with subcontract submittal)

## **MATERIAL SUPPLIERS OR MANUFACTURERS/FABRICATORS**

### **RED FLAGS**

- Invoices do not indicate that DBE is the customer
- A Prime Contractor's employee is listed as the contact person on invoices
- Materials are ordered, billed to, and/or paid, by the Prime Contractor
- Drop shipped materials are addressed to the Prime Contractor
- Materials for DBE credited work are delivered by the Prime Contractor
- Evidence that the DBE supplier is not actually supplying material
- Evidence that the DBE manufacturer is not actually manufacturing material
- Two Party checks or joint checks sent by the Prime to the supplier or manufacturer
- DBE owner or superintendent does not come to project site to verify the adequacy of drop shipped materials (quality and quantity)

### **RECORDS/DOCUMENTS**

- Invoices/Purchase Orders
- Copies of cancelled checks, electronic bill transfers, bank statements, credit card statement, etc.
- Bills of Lading

## **SUPERVISION**

### **RED FLAGS**

- Prime Contractor or another subcontractor is completely supervising or directing the DBE's work
- The DBE's employees are being supervised or otherwise receiving a large amount of direction on the performance of their work from Prime Contractor or another subcontractor
- The DBE provides little or no supervision of work
- The DBE supervisor is not a full-time employee of the DBE

### **RECORDS/DOCUMENTS**

- Document communication with DBE owner or Superintendent (recommend note in field inspector's diary/PSA)
- Certified Payrolls
- Photos

### **DBE REGULATIONS REGARDING COMMERCIALLY USEFUL FUNCTION (CUF)**

#### **49 Code of Federal Regulations Part 26 Section 55 as edited for conformity with Pennsylvania Department of Transportation requirements**

#### **(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.**

- (1) 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. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- (2) A DBE does not perform a commercially useful function 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. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.
- (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
- (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c) (3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

#### **(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:**

- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- (2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- (5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement
- (6) For purposes above, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.