

Commercially Useful Function Guidance

The guidance below is included to assist you in determining whether or not a Disadvantaged Business Enterprise (DBE) is performing a Commercially Useful Function (CUF) as required under Section 26.55 of Title 49 Code of Federal Regulations Part 26 (Part 26). Whenever you are unsure of whether a DBE is performing a CUF, contact the TDOT Small Business Development Program (SBDP) at 615-741-3681 or 1-888-370-3647 for further guidance.

Send a copy of the completed CUF Checklist to TDOT.DBE.Program@tn.gov immediately after completion and maintain the original, completed form in the project files. If all supporting documentation is not yet available, please complete the checklist to the extent possible indicating in the 'Comments' field any items that still need to be reviewed. Upon receipt of the additional documentation the CUF Checklist should be completed. Continue to monitor the DBE firm to ensure that Commercially Useful Function requirements are being met during the life of the project. A CUF Checklist shall be completed for all DBEs on all federally funded projects, regardless if they are being used to meet the DBE project goal. A CUF Checklist should be completed for all DBE's on all State funded projects. Every time a DBE performs a new or different function on the project, a new CUF Checklist should be completed. When in doubt contact the SBDP for additional guidance and/or assistance.

Please note that there is no cookbook or exhaustive list of CUF situations as they tend to be fact-specific. The following are examples of some of the more common incidences:

PERFORMANCE

RED FLAGS

- A portion of the DBE's work is being done by the Prime Contractor or jointly with another contractor
- Employee(s) working for both the Prime (or higher tiered contractor) and the DBE
- Equipment used by DBE belongs to the Prime Contractor
- Equipment used by DBE belongs to another contractor with no formal lease agreement
- Equipment signs and markings cover another contractor's identity
- Equipment has another contractor's name on it

RECORDS/DOCUMENTS

- Certified payrolls
- Rental and/or lease documents in accordance with SP1247. Subcontract Agreement or Purchase Order

SUPERVISION

RED FLAGS

- Prime Contractor or another subcontractor is performing the DBE's work
- The DBE's employees are being supervised by the 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 daily work report)
- Certified Payrolls

PAYMENT

RED FLAGS

- DBE is paid by joint check (prior approval from the SBDO must be given)

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/are 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
- Rental and/or lease documents in accordance with SP1247.

MATERIAL SUPPLIERS AND/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 is provided that the DBE supplier is not actually supplying material
- Evidence is provided that the DBE manufacturer is not actual manufacturing material
- Two Party checks or joint checks are sent by the Prime to the supplier or manufacturer

RECORDS/DOCUMENTS

- Invoices/Purchase Orders
- Bills of Lading

TDOT DBE COMMERCIALLY USEFUL FUNCTION CHECKLIST

1. To be completed by the Project Inspector for each DBE on every project.
2. If at any time a DBE is observed not performing a CUF, or if there are red flags, suspicious activity or other items that warrant further attention, report to the Operations District Supervisor, Operations District Engineer, Regional Operations Engineer and TDOT Civil Rights Division Small Business Development Program Director immediately.
3. Submit the completed form to the Civil Rights Division at TDOT.DBEP@tn.gov

COMPLETE THIS SECTION FOR ALL DBEs ON ALL TDOT CONTRACTS

Name of Reviewer:		Date of Review:	
Title of Reviewer:		Prime Contractor:	
Contract No.:	Project No.:		County:
Contract Description:			
DBE Firm:		Start Date of Work:	
Describe the type of work performed:			
DBE on-site representative:		Title:	
DBE on-site representative reports to:			

PERFORMANCE

YES NO N/A

- | | | | |
|--|--------------------------|--------------------------|--------------------------|
| 1. Does the DBE have its own employees on the job to perform the work? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Is the DBE self-performing the subcontracting work on the contract? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

SUPERVISION

YES NO N/A

- 1. Is the DBE self-performing work without assistance from the prime or another subcontractor?
- 2. Is the DBE providing supervision of its employees and their work?
- 3. Is the supervisor a full-time employee of the DBE?
- 4. Does the DBE effectively manage the job site without interference from any other non-DBE contractor?

COMMENTS:

PAYMENT

YES NO N/A

- 1. Is the prime contractor making a payment to the DBE with a joint check (DBE must be asked)?
- 2. If yes, was this pre-approved by TDOT's Small Business Development Program (DBE Program)?

EMPLOYEES

List the name and position of each DBE employee observed:

Have you seen any of the DBE's crew working for another contractor on the job?
If yes, explain:

YES NO N/A

EQUIPMENT

Major Equipment Used	Serial Number	DBE Markings?		DBE Operator/Driver?		Leased?*	
		Yes/No	If no, list other markings	Yes/No	If no, list company operator works for	Yes/No	If yes, list company leased from

Attach additional sheets as necessary

- | | YES | NO | N/A |
|--|--------------------------|--------------------------|--------------------------|
| 1. If equipment was leased, were copies of the lease agreements submitted? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

ONLY COMPLETE THE SECTION BELOW IF HAULING IS INVOLVED

- | | YES | NO | N/A |
|---|--------------------------|--------------------------|--------------------------|
| 1. Does it appear the DBE firm owns and/or leases the trucks/hauling equipment? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do the drivers appear to be employees under the guidance of the DBE? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do the haul tickets and/or bills of lading associated with the project confirm that hauling is being performed by the DBE? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

COMMENTS (if applicable):

ONLY COMPLETE THE SECTION BELOW IF SUPPLYING IS INVOLVED

	YES	NO	N/A
1. Does the DBE’s name appear on all applicable invoices, haul tickets, and/or bills of lading?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Did the DBE deliver materials to the site with their own and/or leased trucks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the business regularly stock the supplied product?*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If not, please explain:			

COMMENTS (if applicable):

A DBE must regularly stock the supplied item unless they meet the following exception”

A person may be a regular dealer (supplier) in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

COMMERCIAL USEFUL FUNCTION DETERMINATION

- It appears the DBE was performing a Commercial Useful Function*
- It does **NOT** appear the DBE was performing a Commercial Useful Function*.
*Please contact the Civil Rights Division immediately at 615-741-3681.
*Please explain why they did not appear to perform a CUF:

Digital Signature (sign manually if printed): _____

*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.