



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

Block Grant Number	Airport	Review Date:
--------------------	---------	--------------

Prime Contractor:

DBE Firm:	DBE Function:
-----------	---------------

Provide a brief description of the DBE's scope of work. (Obtain copy of Subcontract Agreement and/or Purchase Order if needed.)

For any question marked 'No', please explain in the 'Comments' section below and fax the form as indicated on page 2.

PERFORMANCE YES NO N/A

1. Does the DBE have its own employees on the job to perform the work?
2. Does the DBE own the equipment being utilized to perform its work?
If No, attach equipment list, ownership documents, and rental/lease agreements.
3. Is the DBE self performing the subcontract defined task for a specific item of work
(distinct element) on the contract?

HAULING FIRMS YES NO N/A

1. Does the DBE hauling firm own and/or lease their trucks?
(review ownership/vehicle registration and/or lease documents to verify)
2. Does the DBE employ drivers for trucks owned by the company? (If leased trucks include
operators, this should be indicated in the agreement/purchase order.)
3. Do the haul tickets and/or bills of lading associated with the project confirm that
hauling is being performed by the DBE?

MATERIAL SUPPLIERS OR MANUFACTURERS/FABRICATORS YES NO N/A

1. Does the DBE's name appear on all applicable invoices, haul tickets, and/or bills of lading?
2. Did the DBE provide documentation showing that the funds used to pay a supplier
in fact came from the DBE's own funds?
3. If the DBE had any materials drop shipped to the project site,
was the invoice addressed to the DBE?
4. Did the DBE deliver materials to the site with their own and/or leased trucks?

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?

COMMENTS (This section may be used to describe other concerns not described above or to provide additional information).

Block Grant No.:	DBE Firm:
<u>INSPECTOR-IN-CHARGE</u>	
_____ Signature	_____ Date
_____ Print Name	_____ Phone Number

Complete one form for each DBE participating on any federally funded project within five (5) days after the DBE firm starts work. If all supporting records and documents are not yet available, please indicate those that still need to be reviewed in the 'Comments' section above and complete the form to the extent possible. As those records become available they should be reviewed and any unanswered questions should be completed. This form and any supporting documentation are to be kept with the project files.

If any question is marked 'No', please explain in the 'Comments' section above and immediately email one copy of the completed form to the Bureau of Equal Opportunity (BEO), DBE/Title VI Division via the resource account, penndotcuf@pa.gov, copying in the Bureau of Aviation Project Manager. BEO must perform a CUF evaluation and provide a file copy of the CUF determination in order to finalize the project. If you have any questions or concerns, please contact BEO at 717-787-5891 or 1-800-468-4201.

<u>FOR THE BUREAU OF EQUAL OPPORTUNITY USE ONLY</u>	
Action Taken:	
_____ Signature	_____ Date
_____ Print Name	

GUIDANCE FOR COMPLETING THE CUF FORM

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). 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.

Please note that it does not cover every potential CUF issue. Whenever you are unsure of whether a DBE is performing a CUF, contact the Bureau of Equal Opportunity (BEO) at 717-787-5891 or 1-800-468-4201 for further guidance. If necessary, BEO will confer with the Office of Chief Counsel.

Maintain the completed form in the project files. If all supporting documentation is not yet available, please complete the form 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 form 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 form **must be completed for all DBEs performing on any federally funded project**, regardless if they are being used to meet the DBE project goal. Every time a DBE performs a new or different function on the project, a new CUF form should be completed. When in doubt contact the BEO 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

- Employee(s) working for both the Prime 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
- A portion of the DBE's work 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/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
- 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 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
- 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 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 diary/PSA)
- Certified Payrolls

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 an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - (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.